(27,798)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 441.

PINE HILL COAL COMPANY, INC., APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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I. *Petition and Exhibits.*

Filed Sept. 24, 1919.

IN THE

Court of Claims of the United States.

Pine Hill Coal Company, Inc.,

vs.

The United States.

No. 34,202.

PETITION.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE JUDGES OF THE COURT OF CLAIMS OF THE UNITED STATES.

The Claimant, Pine Hill Coal Company, Inc., respectfully represents:—

1. The Claimant is a corporation of the State of Pennsylvania and has been since the year 1898 lawfully engaged in the business of mining, producing and selling anthracite coal, having its office and principal place of business at Scranton, Pennsylvania, and operating mines and collieries in Cass Township, Schuylkill County, Pennsylvania. At the said mines and collieries this Claimant mines and produces, and since the year 1898 has mined and produced anthracite coal of white ash grade, and in the following sizes, to wit: Egg, Stove, Chestnut, Pea, Buckwheat, Rice, Barley, and Culm. The principal business of this Claimant consists of mining, producing and selling the larger sizes of coal, *i. e.*, Egg, Stove, Chestnut, and Pea, which sizes are commonly known and hereinafter referred to as "Domestic Sizes." As an incident to the mining of these

sizes, and as a byproduct thereof, there are necessarily produced certain quantities of smaller sizes, *i. e.*, Buckwheat, Rice, Barley, and Culm, which sizes are commonly known and hereinafter referred to as "Steam Sizes," and are sold and used for manufacturing purposes in competition with bituminous coal.

The said mines and collieries have always been economically and efficiently operated, in accordance with the best practice prevailing in the anthracite region, and the coal produced therefrom has been mined at a reasonably low cost in comparison with similar anthracite mines and collieries in the same region.

2. The President of the United States, under and by virtue of the powers granted to him by the Act of Congress approved August 10th, 1917 (40 Statutes at Large 276), on August 23d, 1917, by executive order (Fuel Administration Publication No. 3), fixed the maximum price at which the Domestic Sizes of anthracite coal might be sold f. o. b. mines after September 1st, 1917. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit A."

3. The President of the United States, under and by virtue of the powers granted to him by the said Act of August 10th, 1917, on August 23d, 1917, by Executive Order No. 2690 (Fuel Administration Publication No. 1), appointed Harry A. Garfield United States Fuel Administrator, and by the said order delegated to the said Fuel Administrator the powers and authority given to the President in the said Act in so far as the same applied to fuel. A true and correct copy of said order is hereto attached and made a part hereof, marked "Exhibit B."

4. By direction of the President of the United States, the said United States Fuel Administrator on October 1st, 1917, by order (Fuel Administration Publication No. 4), amended and reduced by 60 cents per ton the maximum

prices as fixed by the President August 23d, 1917, for Pennsylvania anthracite pea coal. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit C."

5. The President of the United States on November 28th, 1917, by Executive Order, effective December 1st, 1917, amended and increased the said prices on Domestic Sizes as originally fixed by the President and as revised by the United States Fuel Administrator, by adding 35 cents per ton thereto. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit D."

6. By order of the said United States Fuel Administrator, the said prices on Domestic Sizes were reduced by 30 cents per ton on all coal sold during the months of April, May, June, July, and August, 1918.

7. The said United States Fuel Administrator, on November 7th, 1918, by order (Fuel Administration Circular 3505), again amended and increased the said prices on Domestic Sizes as originally fixed by the President and as revised as aforesaid by adding thereto an additional sum of $1.05 per ton on all of the said sizes of coal mined and produced on and after November 1st, 1918. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit E."

8. The said United States Fuel Administrator, with the approval of the President, on January 31st, 1919, by order (Fuel Administration Circular 3886), suspended all orders previously issued or promulgated by or under authority of the President or of the United States Fuel Administrator, fixing the prices of coal. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit F."

9. The said maximum prices, as originally fixed and as amended by the President and by the United States Fuel Administrator, as applied to the coal mined and produced by this Claimant, were unjust, unreasonable, and did not afford just compensation therefor. The said prices were not satisfactory to this Claimant, and protests against the same were made to the United States Fuel Administrator from time to time by and on behalf of this Claimant.

10. During the month of September, 1917, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 17,323.95 tons (2240 pounds each), of white ash anthracite coal for the total sum of $82,618.57 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

SEPTEMBER, 1917.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	2,953.75	2,953.75	$5.20	$15,359.50	.....	.....	.....	$15,359.50
Stove	3,467.2	3,467.2	5.45	18,896.27	.....	.....	.....	18,896.27
Nut	4,897.	4,897.	5.55	27,178.39	.....	.....	.....	27,178.39
Pea	1,617.8	1,617.8	4.75	7,684.57	.....	.....	.....	7,684.57
Buck	3,060.55	.....	.....	.....	3,060.55	$3.5229	$10,782.18	10,782.18
Rice	856.7	.....	.....	.....	856.7	2.50	2,141.76	2,141.76
Barley	195.1	.....	.....	.....	195.1	1.75	341.43	341.43
Culm	275.85	.....	.....	.....	275.85	.8499	234.47	234.47
	17,323.95	12,935.75	.....	$69,118.73	4,388.2	.....	$13,499.84	$82,618.57

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

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In addition to the amount received from the said sales, this Claimant received $541.80 from miscellaneous sources, making the total receipts from its mining operations for the said month $83,160.37.

The cost of production of the said coal during the said month, including the expense of operation, maintenance, depreciation, and depletion was $85,544.27.

A reasonable price for the 12,935.75 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $84,495.59, which sum would have been at least $15,376.86 in excess of the amount actually received for the same from sales at the Government prices.

11. During the month of October, 1917, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 21,568.3 tons (2240 pounds each) of white ash anthracite coal for the total sum of $103,361.59 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

OCTOBER, 1917.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,442.35	3,442.35	$5.20	$17,900.22	.....	.....	.....	$17,900.22
ve.....	4,145.75	4,145.75	5.45	22,594 38	.....	.....	.....	22,594.38
.....	6,155.25	6,155.25	5.55	34,161.66	.....	.....	.....	34,161.66
.....	2,137.55	1,901.75	4.15	7,892.29	235.8	$4.85	$1,143.63	9,035.92
k.....	3,981.4	.....	.....	.....	3,981.4	4.0451	16,105.45	16,105.45
e.....	875.5	.....	.....	.....	875.5	2.8147	2,464.30	2,464.30
ley.....	394.55	.....	.....	.....	394.55	1.8009	710.48	710.48
m.....	435.95	.....	.....	.....	435.95	.8927	389.18	389.18
	21,568.3	15,645.1	.....	$82,548.55	5,923.2	.....	$20,813.04	$103,361.59

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The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the said Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $765.02 from miscellaneous sources, making the total receipts from its mining operations for the said month $104,126.61.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $100,931.95.

A reasonable price for the 15,645.1 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $95,530.12, which sum would have been at least $12,981.57 in excess of the amount actually received for the same from sales at the Government prices.

12. During the month of November, 1917, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 17,729.35 tons (2240 pounds each) of white ash anthracite coal for the total sum of $86,844.10, f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

NOVEMBER, 1917.

ZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts fom all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,254.85	3,254.85	$5.20	$16,925.22	.....	.....	.....	$16,925.22
.....	3,410.15	3,410.15	5.45	18,585.35	.....	.....	.....	18,585.35
.....	5,194.85	5,194.85	5.55	28,831.47	.....	.....	.....	28,831.47
.....	1,688.05	1,074.5	4.15	4,459.20	613.55	$4.85	$2,975.72	7,434.92
.....	3,074.1	.....	.....	.....	3,074.1	4.22	12,972.66	12,972.66
.....	352.7	.....	.....	.....	352.7	2.9211	1,030.27	1,030.27
y.....	323.65	.....	.....	.....	323.65	2.0846	674.68	674.68
.....	431.	.....	.....	.....	431.	.9037	389.53	389.53
	17,729.35	12,934.35	.....	$68,801.24	4,795.	.....	$18,042.86	$86,844.10

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the said Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1005.80 from miscellaneous sources, making the total receipts from its mining operations for the said month $87,849.90.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation and depletion was $85,429.06.

A reasonable price for the 12,934.35 tons of coal mined, produced and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $79,677.41, which sum would have been at least $10,876.17 in excess of the amount actu-

ally received for the same from sales at the Government prices.

13. During the month of December, 1917, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 18,746.3 tons (2240 pounds each), of white ash anthracite coal for the total sum of $99,929.21, f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

DECEMBER, 1917.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			To rec fr all
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,402.95	3,402.95	$5.55	$18,886.41	.....	.....	.....	$18
Stove	3,646.75	3,646.75	5.80	21,151.15	.....	.....	.....	21
Nut	5,851.65	5,851.65	5.90	34,524.81	.....	.....	.....	34
Pea	1,735.8	1,059.3	4.50	4,766.87	676.5	$5.20	$3,517.80	8
Buck	3,303.85	.....	.....	.....	3,303.85	4.4906	14,836.41	14
Rice	244.05	.....	.....	.....	244.05	3.3096	807.78	
Barley	145.1	.....	.....	.....	145.1	2.60	377.26	
Culm	416.15	.....	.....	.....	416.15	2.5488	1,060.72	1
	18,746.3	13,960.65	.....	$79,329.24	4,785.65	.....	$20,599.97	$9

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the said Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1969.40 from miscellaneous sources, making the total receipts from its mining operations for the said month $101,898.61.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $93,872.36.

A reasonable price for the 13,960.65 tons of coal mined, produced and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $85,362.72, which sum would have been at least $6033.48 in excess of the amount actually received for the same from sales at the Government prices.

14. During the month of January, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 20,579.3 tons (2240 pounds each), of white ash anthracite coal for the total sum of $109,170.57, f. o. b. mines;; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

JANUARY, 1918.

IZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,986.75	3,986.75	$5.55	$22,126.49	.....	.....	.....	$22,126.49
e.....	3,965.15	3,965.15	5.80	22,997.87	.....	.....	.....	22,997.87
.....	6,287.4	6,287.4	5.90	37,095.74	.....	.....	.....	37,095.74
.....	1,822.9	1,276.4	4.50	5,743.83	546.5	$5.20	$2,841.80	8,585.63
.....	3,330.25	.....	.....	.....	3,330.25	4.4689	14,882.77	14,882.77
.....	437.1	.....	.....	.....	437.1	3.25	1,420.58	1,420.58
ey.....	51.2	.....	.....	.....	51.2	2.35	120.32	120.32
n.....	698.55	.....	.....	.....	698.55	2.7788	1,941.17	1,941.17
	20,579.3	15,515.7	.....	$87,963.93	5,063.6	.....	$21,206.64	$109,170.57

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said

coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1812.42 from miscellaneous sources, making the total receipts from its mining operations for the said month $110,982.99.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $104,799.83.

A reasonable price for the 15,515.7 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $97,215.24, which sum would have been at least $9251.31 in excess of the amount actually received for the same from sales at the Government prices.

15. During the month of February, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 19,219.3 tons (2240 pounds each) of white ash anthracite coal for the total sum of $101,050.94 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

FEBRUARY, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,532.55	3,532.55	$5.55	$19.605.68	.....	.....	.....	$19,6
Stove	3,765.2	3,765.2	5.80	21,838.16	.....	.....	.....	21,8
Nut	5,837.45	5,837.45	5.90	34,441.00	.....	.....	.....	34,4
Pea	1,702.25	1,223.	4.50	5,503.51	479.25	$5.20	$2,492.10	7,9
Buck	2,738.4	.....	.....	.....	2,738.4	4.4515	12,190.03	12,1
Rice	761.3	.....	.....	.....	761.3	3.3270	2,532.89	2,5
Barley	49.9	.....	.....	.....	49.9	2.3500	117.27	1
Culm	832.25	.....	.....	.....	832.25	2.8000	2,330.30	2,3
	19,219.3	14,358.2	.....	$81,388.35	4,861.1	.....	$19,662.59	$101,0

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1160.76 from miscellaneous sources, making the total receipts from its mining operations for the said month $102,211.70.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $94,613.62.

A reasonable price for the 14,358.2 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $88,204.75, which sum would have been at least $6816.40 in excess of the amount actually received for the same from sales at the Government prices.

16. During the month of March, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 22,230.45 tons (2240 pounds each) of white ash anthracite coal for the total sum of $115,608.99 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

MARCH, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	4,044.95	4,044.95	$5.55	$22,449.48	.....	.....	.....	$22,449.48
Stove	4,236.2	4.236.2	5.80	24,569.97	.....	.....	.....	24,569.97
Nut	6,279.3	6,279.3	5.90	37,047.93	.....	.....	.....	37,047.93
Pea	2,064.85	1,593.85	4.50	7,172.34	471.	$5.20	$2,449.20	9,621.54
Buck	3,379.8	.....	.....	.....	3,379.8	4.4428	15,015.97	15,015.97
Rice	1,107.3	.....	.....	.....	1,107.3	3.4744	3,847.20	3,847.20
Barley	978.45	.....	.....	.....	978.45	2.80	2,739.66	2,739.66
Culm	139.6	.....	.....	.....	139.6	2.2725	317.24	317.24
	22,230.45	16,154.3	.....	$91,239.72	6,076.15	.....	$24,369.27	$115,608.99

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open maket during the said month.

In addition to the amount received from the said sales, this Claimant received $648.33 from miscellaneous sources, making the total receipts from its mining operations for the said month $116,257.32.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $105,820.05.

A reasonable price for the 16,154.3 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $97,475.29, which sum would

have been at least $6235.57 in excess of the amount actually received for the same from sales at the Government prices.

17. During the month of April, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 20,566.75 tons (2240 pounds each), of white ash anthracite coal for the total sum of $101,888.33 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

APRIL, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,487.	3,487.	$5.25	$18,306.78	.....	.....	.....	$18,306.78
ve.....	3,958.45	3,958.45	5.50	21,771.53	.....	.....	.....	21,771.53
t.....	5,694.15	5,694.15	5.60	31,887.24	.....	.....	.....	31,887.24
.....	1,992.35	1,992.35	4.20	8,367.87	.....	.....	.....	8,367.87
k.....	3,059.45	.....	.....	.....	3,059.45	$4.40	$13,461.58	13,461.58
e.....	1,351.1	.....	.....	.....	1,351.1	3.90	5,269.30	5,269.30
ley.....	1,024.25	.....	.....	.....	1,024.25	2.7571	2,824.03	2,824.03
	20,566.75	15,131.95	.....	$80,333.42	5,434.8	.....	$21,554.91	$101,888.33

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $799.35 from miscellaneous sources, making the total receipts from its mining operations for the said month $102,687.68.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $99,852.40.

A reasonable price for the 15,131.95 tons of coal mined, produced, and sold at the Government prices during the said

month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $92,923.20, which sum would have been at least $12,589.78 in excess of the amount actually received for the same from sales at the Government prices.

18. During the month of May, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 21,834.35 tons (2240 pounds each), of white ash anthracite coal for the total sum of $107,859.68 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

MAY, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			To rec fr all s
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,834.15	3,834.15	$5.25	$20,129.32	.....	.....	.....	$20,
Stove	4,270.1	4,270.1	5.50	23,485.59	.....	.....	.....	23,
Nut	5,722.	5,722.	5.60	32,043.20	.....	.....	.....	32,
Pea	2,179.95	2,179.95	4.20	9,155.79	.....	.....	.....	9,
Buck	3,230.3	.....	.....	.....	3,230.3	$4.40	$14,213.32	14,
Rice	1,468.85	.....	.....	.....	1,468.85	3.9095	5,742.56	5,
Barley	1,129.	.....	.....	.....	1,129.	2.7368	3,089.90	3,
	21,834.35	16,006.2	.....	$84,813.90	5,828.15	.....	$23,045.78	$107,

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $517.69 from miscellaneous sources, making the total receipts from its mining operations for the said month $108,377.37.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $102,790.60.

A reasonable price for the $16,006.2 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $95,602.89, which sum would have been at least $10,788.99 in excess of the amount actually received for the same from sales at the Government prices.

19. During the month of June, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 21,435.75 tons (2240 pounds each), of white ash anthracite coal for the total sum of $105,-281.98 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

JUNE, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
gg.....	3,815.5	3,815.5	$5.25	$20,031.39	.....	.....	.....	$20,031.39
tove.....	3,919.05	3,919.05	5.50	21,554.80	.....	.....	.....	21,554.80
ut.....	5,684.15	5.684.15	5.60	31,831.24	.....	.....	.....	31,831.24
ea.....	2,285.55	2,285.55	4.20	9,599.31	.....	.....	.....	9,599.31
uck.....	2,946.3	.....	.....	.....	2,946.3	$4.40	$12,963.72	12,963.72
ice.....	1,512.15	.....	.....	.....	1,512.15	3.9841	6,024.57	6,024.57
arley.....	47.1	.....	.....	.....	47.1	3.00	141.30	141.30
arley and Smaller..	1,225.95	.....	.....	.....	1,225.95	2.5577	3,135.65	3,135.65
	21,435.75	15,704.25	.....	$83,016.74	5,731.5	.....	$22,265.24	$105,281.98

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing

market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $3054.20 from miscellaneous sources, making the total receipts from its mining operations for the said month $108,336.18.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $104,673.75.

A reasonable price for the 15,704.25 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $95,431.12, which sum would have been at least $12,414.38 in excess of the amount actually received for the same from sales at the Government prices.

20. During the month of July, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 20,537.15 tons (2240 pounds each) of white ash anthracite coal for the total sum of $100,652.13 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

JULY, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,607.45	3,607.45	$5.25	$18,939.17	.....	.....	.....	$18,939.17
Stove	3,719.6	3,719.6	5.50	20,457.85	.....	.....	.....	20,457.85
Nut	5,397.35	5,397.35	5.60	30,225.16	.....	.....	.....	30,225.16
Pea	2,010.2	2,010.2	4.20	8,442.84	.....	.....	.....	8,442.84
Buck	2,869.05	.....	.....	.....	2,869.05	$4.40	$12,623.82	12,623.82
Rice	1,892.7	.....	.....	.....	1,892.7	4.0685	7,700.49	7,700.49
Barley and smaller	1,040.8	.....	.....	.....	1,040.8	2.174	2,262.80	2,262.80
	20,537.15	14,734.6	.....	$78,065.02	5,802.55	.....	$22,587.11	$100,652.13

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United

States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1875.57 from miscellaneous sources, making the total receipts from its mining operations for the said month $102,527.70.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $100,967.43.

A reasonable price for the 14,734.6 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $91,907.61, which sum would have been at least $13,842.59 in excess of the amount actually received for the same from sales at the Government prices.

21. During the month of August, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 20,753.75 tons (2240 pounds each) of white ash anthracite coal for the total sum of $103,278.47 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

AUGUST, 1918.

E.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,805.25	3,805.25	$5.25	$19,977.63	.....	.....	.....	$19,977.63
.....	3,860.5	3,860.5	5.50	21,232.81	.....	.....	.....	21,232.81
.....	5,798.2	5,798.2	5.60	32,469.92	.....	.....	.....	32,469.92
.....	1,905.55	1,905.55	4.20	8,003.31	.....	.....	.....	8,003.31
.....	2,948.8	.....	.....	.....	2,948.8	$4.40	$12,974.72	12,974.72
.....	1,794.05	.....	.....	.....	1,794.05	3.9212	7,034.94	7,034.94
and er...	641.4	.....	.....	.....	641.4	2.4714	1,585.14	1,585.14
	20,753.75	15,369.5	.....	$81,683.67	5,384.25	.....	$21,594.80	$103,278.47

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1292.60 from miscellaneous sources, making the total receipts from its mining operations for the said month $104,571.07.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $108,395.28.

A reasonable price for the 15,369.5 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $101,073.19, which sum would have been at least $19,389.52 in excess of the amount actually received for the same from sales at the Government prices.

22. During the month of September, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 19,301.65 tons (2240 pounds each), of white ash anthracite coal for the total sum of $99,025.59 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

SEPTEMBER, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,271.55	3,271.55	$5.55	$18,157.15	.....	.....	.....	$18,157.15
Stove	3,476.35	3,476.35	5.80	20,162.83	.....	.....	.....	20,162.83
Nut	5,376.2	5,376.2	5.90	31,719.63	.....	.....	.....	31,719.63
Pea	1,856.15	1,856.15	4.50	8,352.69	.....	.....	.....	8,352.69
Buck	2,613.55	.....	.....	.....	2,613.55	$4.4052	$11,513.23	11,513.23
Rice	1,726.5	.....	.....	.....	1,726.5	3.9632	6,842.59	6,842.59
Barley	981.35	.....	.....	.....	981.35	2.3207	2,277.47	2,277.47
	19,301.65	13,980.25	.....	$78,392.30	5,321.4	.....	$20,633.29	$99,025.59

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1040.73 from miscellaneous sources, making the total receipts from its mining operations for the said month $100,066.32.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $101,523.66.

A reasonable price for the 13,980.25 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $94,325.88, which sum would have been at least $15,933.58 in excess of the amount actually received for the same from sales at the Government prices.

23. During the month of October, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 5526.3 tons (2240 pounds each), of white ash anthracite coal for the total sum of $29,104.02 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

OCTOBER, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
g.....	1,133.05	1,133.05	$5.55	$6,288.47	.....	.....	.....	$6,288.47
ove.....	1,134.4	1,134.4	5.80	6,579.52	.....	.....	.....	6,579.52
ut.....	1,745.3	1,745.3	5.90	10,297.30	.....	.....	.....	10,297.30
a.....	560.05	560.05	4.50	2,520.25	.....	.....	.....	2,520.25
ack.....	450.5	.....	.....	.....	450.5	$4.41	$1,986.80	1,986.80
ce.....	180.6	.....	.....	.....	180.6	4.00	722.40	722.40
ice and Barley...	322.4	.....	.....	.....	322.4	2.20	709.28	709.28
	5,526.3	4,572.8	.....	$25,685.54	953.5	.....	$3,418.48	$29,104.02

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $374.41 from miscellaneous sources, making the total receipts from its mining operations for the said month $29,478.43.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $56,777.54.

A reasonable price for the 4572.8 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $57,129.38, which sum would have been at least $31,443.84 in excess of the amount actually received for the same from sales at the Government prices.

24. During the month of November, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 13,892.9 tons (2240 pounds each), of white ash anthracite coal for the total sum of $85,837.03 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

NOVEMBER, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	2,907.9	2,907.9	$6.60	$19,192.14	.....	.....	.....	$19,192.14
Stove	2,912.1	2,912.1	6.85	19,947.93	.....	.....	.....	19,947.93
Nut	4,276.9	4,276.9	6.95	29,724.52	.....	.....	.....	29,724.52
Pea	1,529.15	1,529.15	5.55	8,486.81	.....	.....	.....	8,486.81
Buck	1,586.	.....	.....	.....	1,586.	$4.406	$6,987.76	6,987.76
Barley and smaller	680.85	.....	.....	.....	680.85	2.20	1,497.87	1,497.87
	13,892.9	11,626.05	.....	$77,351.40	2,266.85	.....	$8,485.63	$85,837.03

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1036.43 from miscellaneous sources, making the total receipts from its mining operations for the said month $86,873.46.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $101,022.20.

A reasonable price for the 11,626.05 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum prices which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $101,919.82, which sum would have been at least $24,568.42 in excess of the amount actually received for the same from sales at the Government prices.

25. During the month of December, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 17,900.4 tons (2240 pounds each), of white ash anthracite coal for the total sum of $109,360.00 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

DECEMBER, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
gg.....	3,322.75	3.322.75	$6.60	$21,930.15	.....	.....	.....	$21,930.15
ove.....	3,642.55	3,642.55	6.85	24,951.56	.....	.....	.....	24,951.56
ut.....	5,367.	5,367.	6.95	37,300.72	.....	.....	.....	37,300.72
ea.....	2,046.95	2,046.95	5.55	11,360.61	.....	.....	.....	11,360.61
uck.....	2,585.4	.....	.....	.....	2,585.4	$4.4017	$11,380.40	11,380.40
ice.....	426.95	.....	.....	.....	426.95	3.1088	1,327.35	1,327.35
arley and smaller...	508.8	.....	.....	.....	508.8	2.18	1,109.21	1,109.21
	17,900.4	14,379.25	.....	$95,543.04	3,521.15	.....	$13,816.96	$109,360.00

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1584.36 from miscellaneous sources, making the total receipts from its mining operations for the said month $110,944.36.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $118,713.95.

A reasonable price for the 14,379.25 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $116,737.93, which sum would have been at least $21,194.89 in excess of the amount actually received for the same from sales at the Government prices.

26. During the month of January, 1919, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 18,765.65 tons (2240 pounds each) of white ash anthracite coal for the total sum of $115,896.31 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

JANUARY, 1919.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg.....	3,816.5	3,816.5	$6.60	$25,188.90	.....	.....	.....	$25,188.90
Stove.....	4,303.1	4,303.1	6.85	29,476.34	.....	.....	.....	29,476.34
Nut.....	6,300.7	6,300.7	6.95	43,785.01	.....	.....	.....	43,785.01
Pea.....	1,971.2	1,971.2	5.55	10,940.20	.....	.....	.....	10,940.20
Buck.....	1,767.05	.....	.....	.....	1,767.05	$2.9445	$5,203.24	5,203.24
Rice.....	419.65	.....	.....	.....	419.65	2.30	965.21	965.21
Barley and smaller...	187.45	.....	.....	.....	187.45	1.80	337.41	337.41
	18,765.65	16,391.5	.....	$109,390.45	2,374.15	.....	$6,505.86	$115,896.31

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1214.80 from miscellaneous sources, making the total receipts from its mining operations for the said month $117,111.11.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $112,561.48.

A reasonable price for the 16,391.5 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $118,915.06, which sum would have been at least $9524.61 in excess of the amount actually received for the same from sales at the Government prices.

27. The following table is a recapitulation and consolidation of the figures more fully set forth in paragraphs 10-26 inc. hereof, and shows by months for the period from September 1st, 1917, to January 31st, 1919, (*a*) the gross output of tons of coal from the Claimant's mines, (*b*) the gross receipts from mining operations, (*c*) the cost of production, (*d*) the profit or loss realized by the Claimant, (*e*) the minimum profit of 75 cents per ton which would have been realized by this Claimant if no prices had been fixed, or if the Claimant had been permitted to sell its coal at a fair price, and (*f*) the minimum loss incurred by the Claimant on account of the prices having been so fixed.

MONTH.	(a) Tons mined and sold.			(b) Receipts from mining operations.				(c) Cost of production	(d) Profit or loss.	(e) Minimum profit if fair prices had been fixed.	(f) Loss on account of price fixing.
	At Government prices.	At other than Government prices.	Total tonnage.	Sales at Government prices.	Sales at other than Government prices.	Miscellaneous receipts.	Total receipts.				
1917.											
September	12,935.75	4,388.2	17,323.95	$69,118.73	$13,499.84	$541.80	$83,160.37	$85,544.27	L. $2,383.90	$12,992.96	$15,376.86
October	15,645.1	5,923.2	21,568.3	82,548.55	20,813.04	765.02	104,126.61	100,931.95	P. 3,194.66	16,176.23	12,981.57
November	12,934.35	4,795.0	17,729.35	68,801.24	18,042.86	1,005.80	87,849.90	85,429.06	P. 2,420.84	13,297.01	10,876.17
December	13,960.65	4,785.65	18,746.3	79,329.24	20,599.97	1,969.40	101,898.61	93,872.36	P. 8,026.25	14,059.73	6,033.48
1918.											
January	15,515.7	5,063.6	20,579.3	87,963.93	21,206.64	1,812.42	110,982.99	104,799.83	P. 6,183.16	15,434.47	9,251.31
February	14,358.2	4,861.1	19,219.3	81,388.35	19,662.59	1,160.76	102,211.70	94,613.62	P. 7,598.08	14,414.48	6,816.40
March	16,154.3	6,076.15	22,230.45	91,239.72	24,369.27	648.33	116,257.32	105,820.05	P. 10,437.27	16,672.84	6,235.57
April	15,131.95	5,434.8	20,566.75	80,333.42	21,554.91	799.35	102,687.68	99,852.40	P. 2,835.28	15,425.06	12,589.78
May	16,006.2	5,828.15	21,834.35	84,813.90	23,045.78	517.69	108,377.37	102,790.60	P. 5,586.77	16,375.76	10,788.99
June	15,704.25	5,731.5	21,435.75	83,016.74	22,265.24	3,054.20	108,336.18	104,673.75	P. 3,662.43	16,076.81	12,414.38
July	14,734.6	5,802.55	20,537.15	78,065.02	22,587.11	1,875.57	102,527.70	100,967.43	P. 1,560.27	15,402.86	13,842.59
August	15,369.5	5,384.25	20,753.75	81,683.67	21,594.80	1,292.60	104,571.07	108,395.28	L. 3,824.21	15,565.31	19,389.52
September	13,980.25	5,321.4	19,301.65	78,392.30	20,633.29	1,040.73	100,066.32	101,523.66	L. 1,457.34	14,476.24	15,933.58
October	4,572.8	953.5	5,526.3	25,685.54	3,418.48	374.41	29,478.43	56,777.54	L. 27,299.11	4,144.73	31,443.84
November	11,626.05	2,266.85	13,892.9	77,351.40	8,485.63	1,036.43	86,873.46	101,022.20	L. 14,148.74	10,419.68	24,568.42
December	14,379.25	3,521.15	17,900.4	95,543.04	13,816.96	1,584.36	110,944.36	118,713.95	L. 7,769.59	13,425.30	21,194.89
1919.											
January	16,391.5	2,374.15	18,765.65	109,390.45	6,505.86	1,214.80	117,111.11	112,561.48	P. 4,549.63	14,074.24	9,524.61
Total	239,400.4	78,511.2	317,911.6	$1,354,665.24	$302,102.27	$20,693.67	$1,677,461.18	$1,678,289.43	L. $838.25	$238,433.71	$239,261.96

28. In the anthracite coal business the reasonable investment necessary to mine an annual ton of coal is not less than $5.00; that is to say that to produce 300,000 tons annually requires an investment in coal and equipment of at least $1,500,000. The fair value of the property and equipment of this Claimant used in mining the coal the subject matter of the present claim was, during the period from September 1, 1917, to January 31, 1919, not less than $1,500,000. During the said period the said plant was economically and efficiently operated and the said coal produced at a reasonably low cost in comparison with other anthracite collieries. The Claimant avers that a just and reasonable profit on said coal would have been 75 cents per ton, which profit could have been obtained on the said coal so sold, had it not been for the said Government price restrictions.

29. The said Act of August 10th, 1917 (40 Statutes at Large 276), under which the said prices were fixed by the President and by the United States Fuel Administrator, in section 25 thereof, after authorizing the President to fix the prices of coal or to requisition the mines, provides, *inter alia*, as follows:—

> "That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code."

The said section 25 further provides:—

> "In fixing maximum prices for producers the commission shall allow the cost of production, including the

expense of operation, maintenance, depreciation, and depletion, and shall add thereto a just and reasonable profit."

30. This Claimant is advised and believes that under the said Act of Congress, and the said orders of the President and the United States Fuel Administrator, a contract was created between the Claimant and the United States, and that by this contract the United States is obligated to pay to the Claimant a sum of money which, added to the amount received by it from sales of coal at the prices fixed by the Government from September 1, 1917, to January 31, 1919, will be just compensation for the coal sold at the prices so fixed. The Claimant avers that this sum is $239,261.96.

31. No action has been taken by the Congress of the United States or by either House thereof or in any court or by any of the departments on the claim here presented; this Claimant is the sole owner thereof and the only person interested therein, and no assignment or transfer of the said claim or any part thereof or any interest therein has been made; this Claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets; and this claimant has at all times borne true allegiance to the Government of the United States, and has not in any way aided or abetted or given encouragement to rebellion against the said Government.

32. Wherefore the Claimant prays judgment against the United States for the sum of $239,261.96.

PINE HILL COAL COMPANY, INC.
By
CLARENCE B. STURGES,
President.

HENRY S. DRINKER, JR.,
Attorney of Record.
750 Bullitt Building, Philadelphia, Pa.

PERCY C. MADEIRA, JR.,
DOUGLAS M. MOFFAT,
WILLIAM A. GLASGOW, JR.,
Of Counsel.

STATE OF NEW YORK
COUNTY OF NEW YORK.

CLARENCE B. STURGES, being duly sworn according to law, deposes and says that he is President of Pine Hill Coal Company, Inc., the petitioner and claimant herein, that he is duly authorized to verify this petition on behalf of the said claimant, and that he believes the facts as stated in the said petition to be true.

Sworn and subscribed to before me this 19th day of Sept. 1919.

[Notarial Seal]

(Sgd) ROBERT J. SIMPSON,
Notary Public.

My commission expires March 30th 1920.
Notary public, Kings County No. 13
Certificate filed in New York County No. 103
New York Co. Register No. 10125.

EXHIBIT A.

(Fuel Administration Publication No. 3.)

The following regulations shall apply to the intrastate, interstate, and foreign commerce of the United States, and the prices and margins referred to herein shall be in force pending further investigation or determination thereof by the President.

JOBBERS' MARGINS.

1. A coal jobber is defined as a person (or other agency) who purchases and resells coal to coal dealers or to consumers without physically handling it on, over, or through his own vehicle, dock, trestle, or yard.

2. For the buying and selling of bituminous coal a jobber shall not add to his purchase price a gross margin in excess of 15 cents per ton of 2,000 pounds, nor shall the combined gross margins of any number of jobbers who buy and sell a given shipment or shipments of bituminous coal exceed 15 cents per ton of 2,000 pounds.

3. For buying and selling anthracite coal a jobber shall not add to his purchase price a gross margin in excess of 20 cents per ton of 2,240 pounds when delivery of such coal is to be effected at or east of Buffalo. For buying and selling anthracite coal for delivery west of Buffalo a jobber shall not add to his purchase price a gross margin in excess of 30 cents per ton of 2,240 pounds. The combined gross margins of any number of jobbers who buy and sell a given shipment or shipments of anthracite coal for delivery at or east of Buffalo shall not exceed 20 cents per ton of 2,240 pounds, nor shall such combined margins exceed 30 cents per ton of 2,240 pounds for the delivery of anthracite coal west of Buffalo. Provided that jobber's gross margin realized on a

given shipment or shipments of anthracite coal may be increased by not more than 5 cents per ton of 2,240 pounds when the jobber incurs the expense of rescreening it at Atlantic or lake ports for trans-shipment by water.

4. Effective September 1, 1917, the maximum prices per ton of 2,240 pounds free on board cars at the mines for the grades and sizes of anthracite coal hereinafter specified shall not exceed the prices indicated in paragraph 5 when such coal is produced and sold by the Philadelphia & Reading Coal & Iron Co., Lehigh Coal & Navigation Co., Lehigh & Wilkes-Barre Coal Co., Hudson Coal Co., Delaware & Hudson Co., Scranton Coal Co., Lehigh Valley Coal Co., Coxe Bros. & Co., Pennsylvania Coal Co., Hillside Coal & Iron Co., Delaware, Lackawanna & Western Railroad Co., Delaware, Lackawanna & Western Coal Co., Susquehanna Coal Co., Susquehanna Collieries Co., Lytle Coal Co., or the M. A. Hanna Coal Co.

5. The grades and sizes for which the maximum prices are specified are as follows: White ash anthracite coal of the grade that between January 1, 1915, and January 1, 1917, was uniformly sold and recognized in the coal trade as coal of White ash grade; Red ash anthracite coal of the grade that between January 1, 1915, and January 1, 1917, was uniformly sold and recognized in the trade as coal of Red ash grade; and Lykens Valley anthracite coal that is mined exclusively from the Lykens Valley seams and of the grade that between January 1, 1915, and January 1, 1917, was uniformly sold and recognized in the coal trade as coal of Lykens Valley grade.

White-ash grade:

Broken	$4.55
Egg	4.45
Stove	4.70
Chestnut	4.80
Pea	4.00

Red-ash grade:

Broken	4.75
Egg	4.65
Stove	4.90
Chestnut	4.90
Pea	4.10

Lykens Valley grade:

Broken	5.00
Egg	4.90
Stove	5.30
Chestnut	5.30
Pea	4.35

6. Producers of anthracite coal who are not specified in paragraph 4 shall not sell the various grades and sizes of anthracite coal at prices that exceed by more than 75 cents per ton of 2,240 pounds free on board cars at the mines the prices enumerated in paragraph 5: *Provided*, That any producer of anthracite coal who incurs the expense of rescreening it at Atlantic or Lake ports for transshipment by water may increase the price thereof by not more than 5 cents per ton of 2,240 pounds.

7. Producers of anthracite coal specified in paragraph 4 of these regulations shall not sell anthracite coal to producers of anthracite coal not specified in paragraph 4.

8. Dealers and selling agents shall not sell coal produced by the producers included in paragraph 4 on the basis of the prices fixed at the mine for coal produced by producers not specified in said paragraph.

WOODROW WILSON.

The White House, August 23, 1917.

EXHIBIT B.

(Fuel Administration Publication No. 1.)

By virtue of the power conferred upon me under the act of Congress approved August 10, 1917, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," and particularly for the purpose of carrying into effect the provisions of said act relating to fuel, Harry A. Garfield is hereby designated and appointed United States Fuel Administrator to hold office during the pleasure of the President.

Said Fuel Administrator shall supervise, direct, and carry into effect the provisions of said act and the powers and authority therein given to the President so far as the same apply to fuel as set forth in said act, and to any and all practices, procedure, and regulations authorized under the provisions of said act applicable to fuel, including the issuance, regulation, and revocation under the name of said United States Fuel Administrator of licenses under said act. In this behalf he shall do and perform such acts and things as may be authorized and required of him from time to time by direction of the President and under such rules and regulations as may be prescribed.

Said Fuel Administrator shall also have the authority to employ such assistants and subordinates, including such counsel as may from time to time be deemed by him necessary, and to fix the compensation of such assistants, subordinates, and counsel.

All departments and established agencies of the Government are hereby directed to co-operate with the United States Fuel Administrator in the performance of his duties as hereinbefore set forth.

WOODROW WILSON.

The White House, 23 August, 1917.

EXHIBIT C.

(Fuel Administration Publication No. 4.)

To all persons, firms and corporations engaged in the mining and production of coal in the State of Pennsylvania:

The President of the United States having heretofore, on or about the 23d day of August, 1917, by virtue of the provisions of an Act of Congress approved August 10, 1917, entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," ordered and directed that the maximum prices which should not be exceeded in the sale of Pennsylvania anthracite pea coal should be as follows, to wit: White ash pea coal, $4 per ton; red ash pea coal, $4.10 per ton; and Lykens Valley, $4.35 per ton, when sold by certain producers specified in paragraph 4 of the President's proclamation of August 23, 1917, and that when sold by any other producers the maximum price should not exceed by more than 75 cents the prices mentioned above:

Now, by direction of the President of the United States, the Fuel Administrator hereby orders and directs that, until further order in the premises, the above-mentioned maximum prices for Pennsylvania anthracite pea coal be, and the same hereby are, modified and reduced, pending further investigation, to the following maximum prices: White ash pea coal, $3.40 per ton; red ash pea coal, $3.50 per ton; and Lykens Valley, $3.75 per ton; which said prices are to be observed by the producers specified in paragraph 4 of the President's proclamation of August 23, 1917.

And it is further ordered that all other producers shall sell Pennsylvania anthracite pea coal at maximum prices not to exceed the above-mentioned maximum prices by more than 75 cents per ton of 2,240 pounds.

These prices shall become effective at 7 A.M., October 1, 1917.

H. A. GARFIELD,
Fuel Administrator.

WASHINGTON, D. C., 1 October, 1917.

EXHIBIT D.

THE WHITE HOUSE,
WASHINGTON, D. C., 28 November 1917.

The scale of prices prescribed August 23, 1917, by the President of the United States for anthracite coal at the mines, adjusted as to pea coal October 1, 1917, by order of the United States Fuel Administrator, is hereby amended by adding the sum of 35 cents to each of the prices so prescribed or adjusted; provided, however, that this increase in prices shall not apply to any coal sold at the mines under an existing contract containing a provision for an increase in the price of coal thereunder, in case of an increase of wages paid to miners.

This order shall become effective at 7 A. M., on December 1, 1917.

WOODROW WILSON.

EXHIBIT E.

(Fuel Administration Circular No. 3505.)

UNITED STATES FUEL ADMINISTRATION,
WASHINGTON, D. C., November 7, 1918.

The President of the United States having heretofore by Executive Order dated 23 August, 1917, under authority of an Act of Congress known as the "Food and Fuel Control Act" approved August 10, 1917, fixed the maximum prices per ton of 2,240 pounds f. o. b. cars at the mines for the various grades and sizes of anthracite coal mined and produced in the anthracite coal-producing districts in the State of Pennsylvania, as set forth in said Executive Order, and

The United States Fuel Administrator, acting under authority of an Executive Order of the President of the United States, dated 23 August, 1917, appointing said Administrator, and of subsequent Executive Orders, and in furtherance of the purpose of said orders and of said Act of Congress approved August 10, 1917, having after due consideration by an order effective October 1, 1917, at 7 A. M., modified and reduced the maximum prices for that size and grade of anthracite coal known as anthracite "pea" coal as fixed by said Executive Order of the President dated 23 August, 1917, and

It appearing to the United States Fuel Administrator that the scale of wages paid to the miners by the producers in the anthracite coal-producing districts in the State of Pennsylvania was on November 1, 1918, increased, and thereby the cost of mining and producing such anthracite coal was increased,

The United States Fuel Administrator hereby orders and directs that all prices for the different sizes and grades of anthracite coal f. o. b. mines in the anthracite coal-producing districts in the State of Pennsylvania as specified and fixed by the said Executive Order of the President dated 23 August, 1917, and the order of the United States Fuel

Administrator effective October 1, 1917, at 7 A. M., and the order of the United States Fuel Administrator effective December 1, 1917, adding the sum of Thirty-five Cents (.35) per gross ton of 2,240 pounds to such prices shall be and the same hereby are increased by the sum of One Dollar and Five Cents ($1.05) for each gross ton of 2,240 pounds as to all such anthracite coal mined and produced on and after November 1, 1918.

No producer, distributor, or retail dealer shall include in or add to the prices asked, demanded, or received for any of the sizes and grades of anthracite coal hereinabove specified shipped and delivered after November 1, 1918, said additional sum of One Dollar and Five Cents ($1.05) per each gross ton of 2,240 pounds of such anthracite coal, unless the producer of such anthracite coal actually paid the said increased scale of wages to the miners of such coal effective on and after November 1, 1918.

(Signed) H. A. GARFIELD,
United States Fuel Administrator.

EXHIBIT F.

(FUEL ADMINISTRATION CIRCULAR No. 3886.)

United States Fuel Administration,

WASHINGTON, D. C., January 31, 1919.

The United States Fuel Administrator, acting under authority of an Executive Order of the President of the United States, dated 23 August, 1917, appointing said Administrator, and of subsequent Executive Orders, and in furtherance of the purpose of said orders and of the Act of Congress therein referred to and approved August 10, 1917.

Hereby orders and directs:

SECTION 1. That all rules, regulations, orders, or proclamations, except those enumerated in Section II of this order, heretofore issued or promulgated by, or under authority of the President of the United States or by or under authority of, said United States Fuel Administrator, fixing the prices of coal, coke, charcoal, or wood, or regulating the production, sale, shipment, distribution, apportionment, storage, or use thereof, or requiring the obtaining of licenses to engage in or carry on the business of distributing coal or coke, or establishing rules and regulations in respect to the holders of such licenses or otherwise carrying out the purpose or provisions of the Act of Congress hereinabove referred to, and the operation and effect of such rules, regulations, orders, or proclamations, be, and the same hereby are, suspended, until further or other order or orders in the premises by the President of the United States, said United States Fuel Administrator, or other agency created by the President under said Act, in respect to all coal, coke, charcoal, or wood produced, sold, shipped, distributed, apportioned, stored, or used after January 31, 1919.

SECTION II. That the following rules, regulations, orders and proclamations shall continue in full force and effect until further order or orders in the premises:

(1) Order of said United States Fuel Administrator, dated January 17, 1919, establishing a regulation entitled "Regulation relative to the making of contracts for the sale of coal or coke by operators, producers, jobbers, sales agents, or purchasing agents of coal or coke."

(2) Order of said United States Fuel Administrator, dated November 6, 1917, entitled "Order relative to Tidewater Transshipment of coal at Hampton Roads, Baltimore, Philadelphia, and New York, and for the employment and cooperation with the Tidewater Coal Exchange so called as a common agency to facilitate transshipment and to reduce delays in the use of coal-cars and coal carrying vessels."

(3) All rules, regulations, orders, or proclamations, in so far as such rules, regulations, orders, or proclamations confer upon or delegate to said United States Fuel Administrator, either individually or acting through that governmental organization called the United States Fuel Administration, any powers or authority for the carrying out of the purposes of the Act of Congress hereinabove referred to.

(4) Order of said United States Fuel Administrator, dated January 31, 1919, prohibiting the shipment of coal for reconsignment.

SECTION III. That no order or regulations relative to the prices of coal, coke, charcoal, or wood, or relative to the profits, margins, or commissions on sales thereof, or relative to the production, sale, shipment, distribution, apportionment, storage, or use thereof, shall be made after the date of this order by the Federal Fuel Administrator for any state, or by any local Fuel Administrator or Committee, pursuant to authority heretofore delegated or conferred, unless and until such proposed order or regulation shall have first been submitted to and approved by said United States Fuel Administrator.

SECTION IV. That nothing in this order contained shall be construed to cancel or revoke the designation or appoint-

ment of any person as an officer, agent, representative, counsel, assistant or subordinate of said United States Fuel Administrator or of the United States Fuel Administration.

(Signed) H. A. GARFIELD,
United States Fuel Administrator.

Approved:
WOODROW WILSON.

II. *History of Proceedings.*

On December 8, 1919, the defendants filed a motion for leave to withdraw general traverse and to file a demurrer. This motion was allowed December 12, 1919, and said demurrer was filed April 8, 1920.

III. *Demurrer.*

Filed April 8, 1920.

Demurrer.

Now comes the United States by the Attorney General and demurring to the petition filed herein state as grounds thereof—

I. That the facts alleged in the petition do not constitute a cause of action.

II. That the facts alleged in the petition do not constitute a cause of action within the jurisdiction of this Court.

FRANK DAVIS, JR.,
Assistant Attorney General.
HOWARD W. AMELI,
Special Assistant to the Attorney General.

IV. *Argument and Submission of Demurrer.*

On April 21, 1920, the demurrer in this case was argued and submitted by Mr. H. W. Ameli, for the demurrer, and by Messrs. Henry S. Drinker, Jr., and William A. Glasgow in opposition thereto.

V. *Opinion of the Court on Demurrer by Campbell, Ch. J., Concurred in by Judges Graham, Hay, Downey, and Booth.*

Filed June 14, 1920.

Opinion.

CAMPBELL, *Chief Justice,* delivered the opinion of the court:

The plaintiff's petition is demurred to, and the questions thus presented involve some features, particularly section 25, of the Lever Act, approved August 10, 1917 (40 Stat., 275). The claim is that under the Lever Act and the orders of the President and the Fuel Administrator fixing the prices of coal "a contract was created between the claimant and the United States" by which the latter became obligated to pay "a sum of money which added to the amount received by the plaintiff from sales of coal at the prices fixed by the Government" during the period mentioned "will be just compensation for the coal sold at the prices so fixed."

The plaintiff had been engaged for many years in the business of mining, producing and selling anthracite coal in the State of Penn-

sylvania. It was operating mines and collieries in Schuylkill County when the Lever Act was passed. The coal mined by it was of the white-ash grade, and its principal business consisted of the mining and handling the larger sizes of coal, designated as egg, stove, chestnut, and pea, which are commonly called "domestic sizes." As an incident to mining and producing domestic sizes, there is necessarily produced some smaller sizes of coal, designated as buckwheat, rice, barley, and culm, which are commonly called "steam sizes." These are "sold and used for manufacturing purposes in competition with bituminous coal." The averments of the petition are substantially as follows: That the President, "under and by virtue of the powers granted to him by" the Lever Act, by Executive order, on August 23, 1917, fixing the maximum price at which the domestic sizes of anthracite coal could be sold f. o. b. mines after September 1, 1917; that on the 23d day of August, 1917, the President appointed Mr. Garfield the United States Fuel Administrator, to whom was delegated, by the President, the powers and authority given to the latter in the Lever Act, so far as it applied to fuel; that the maximum price fixed by the President in August for anthracite pea coal was reduced by the Fuel Administrator on October 1 by 60 cents per ton; that the prices on domestic sizes as originally fixed, and as amended in October, were afterwards increased by adding 35 cents per ton thereto; that these latter prices were again reduced by 30 cents per ton on all coal sold during the months of April, May, June, July, and August, 1918; that a further revision was made in November, 1918, by increasing the prices on domestic sizes by $1.05 per ton on coal mined and produced after November, 1918; that the maximum prices were fixed, as above stated, when the coal was mined or produced by certain designated persons or collieries, and that other producers could charge 75 cents per ton more than those named. The plaintiff was not one of those specially named, but came within the latter class.

It is averred that the maximum prices, as originally fixed, or as amended or revised, and as applied to coal mined and produced by plaintiff, "were unjust, unreasonable, and did not afford just compensation therefor"; that these prices were unsatisfactory to plaintiff and were protested against by it from time to time to the Fuel Administrator.

A statement for each month, beginning September, 1917, and extending to, and including, January, 1919, is made, purporting to show the total number of tons of the different sizes of coal produced by plaintiff, the quantities sold at the maximum fixed prices, and the quantities of steam sizes sold at other than the prices fixed for domestic sizes. Taking one of these monthly statements as typical of all it appears that the plaintiff produced and sold in January, 1918, approximately 20,580 tons of coal of domestic and steam sizes, of which there were of the four domestic sizes 15,515 tons, and of the steam sizes 5,065 tons. The amount realized from domestic sizes is stated, and the amount realized from other sizes is also stated. It is then averred that these domestic sizes were all sold "either at the maximum prices" fixed, and applicable to plaintiff's product during the month, "or under contracts approved by the Fuel Admini-

trator at prices higher than those so fixed," while the steam sizes were sold at prevailing market prices, and that plaintiff's total receipts from its mining operations during the month of January were $110,982.99.

It is alleged that "the cost of production of the said coal, during the said month, including the expenses of operation, maintenance, depreciation, and depletion, was $104,799.83." A similar averment is made as to the cost of production in each of the months mentioned, the amounts alone varying. There is an averment that a reasonable price for the 15,515 tons of coal of domestic sizes mined and sold at Government prices during January "and the minimum price which this claimant could have obtained for the same if the prices had not been fixed" would have been at least $9,250 in excess of receipts for coal sold at the fixed prices.

Recapitulating the statements for the several months, it is claimed (1) that plaintiff's total receipts from all mining operations were, in round figures, $1,677,000, and its "cost of production" $1,678,000, or an actual loss, stated to be $838.25; (2) that if "fair prices" had been fixed, its minimum profits would have been $238,433.71, and (3) that its loss, on account of price fixing, was the sum of these items, or $239,261.96. It is averred that a reasonable profit would have been 75 cents per ton.

The plaintiff contends that it is entitled to reasonable compensation for the coal it sold at prices fixed by the Government; that, under the provisions of the Lever Act, it was the intention of Congress that the Government should respond for the difference between the amounts realized at the fixed prices and the amount (at least the minimum amount) plaintiff would have realized from sales if the prices for coal had not been fixed, and that unless this contention be upheld, there would be very grave doubt of the constitutionality of the act. Under the construction thus contended for, it is said in its brief, there can be no doubt as to the constitutionality of the price-fixing provision.

Manifestly, if the Lever Act, or the provisions thereof relating to the fixing of prices, be unconstitutional, the plaintiff can take nothing by its suit, and this is true whether the unconstitutionality rested upon a want of authority in Congress to enact the legislation in question or upon the plaintiff's contention that the severe penalties prescribed by the act amount to a prohibition against seeking judicial construction and therefore deny to plaintiff the equal protection of the law. Ex parte Young, 209 U. S. 123, 145.

1. Whether the act in its price-fixing provisions is constitutional or not depends on the power of Congress to enact it. Section 1 clearly shows the purposes of the statute and that it was a war measure. Not the least of the purposes mentioned was to establish and maintain government control of foods, feed, and fuel, and other things, called in the act "necessaries." It is declared that by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support of the Army and Navy, not alone to assure an adequate supply and equitable distribution of the "necessaries," but to pre-

vent scarcity, monopolization, manipulation, and private control, affecting the supply, distribution, and movement of the same.

Among the powers conferred on the Congress by the Constitution are these:

"To define and punish * * * offenses against the law of nations.

"To declare war * * * and make rules concerning captures on land and water.

"To raise and support armies * * *.

"To provide and maintain a Navy.

"To make rules for the government and regulation of the land and naval forces.

"To provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasions.

"To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress * * *.

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

These powers are granted by Article I, section 8.

In connection with thes powers, expressly granted, there should be considered the provisions which prohibit the several States, without the consent of Congress, from keeping troops or ships of war in time of peace, from entering into any agreement or compact with another State or with a foreign power, or from engaging in war, unless actually invaded, or in such imminent danger as will not admit of delay (Art. I, sec. 10), and the further provision obligating the United States to protect each of the States against invasion (Art. IV, sec. 4).

The prohibition against the exercise of war powers by the States, except with the consent of Congress, may have an important bearing on the reservation to the States, respectively, or to the people, made in the tenth amendment. The powers that are reserved are those not delegated to the United States by the Constitution "nor prohibited by it to the States." Under these grants and guaranties of the Constitution, and its prohibitions against State action, were the powers that inhered in the State as an independent sovereignty, by which its defense and protection could be asserted, entirely lost, or were they carried by implication into the agency, created by the Constitution, charged with the duty of defense and protection, namely the United States? As early as the year 1801 it was declared by Chief Justice Marshall that "the whole powers of war" were vested by the Constitution in Congress. (The Amelia, 1 Cranch, 1, 28.)

The Nation was at war, and because of that fact Congress determined, among other things, that the prices at which producers and dealers could sell coal should be fixed and controlled by governmental agencies. It requires no argument to show that coal was a

"necessary." Whether it was or not, or what we may think of the necessity for the legislation in question, is immaterial, however, because "Congress is authorized to make all laws necessary and proper to carry into effect the granted powers. The measures to be taken in carrying on war and to suppress insurrection are not defined The decision of all such questions rests wholly in the discretion of those to whom the substantial powers involved are confined by the Constitution." (Stewart v. Kahn, 11 Wall., 493, 506.) The courts may not inquire into the motives of Congress, nor the wisdom of the legislation, nor may they pass upon the necessity of a power possessed. (Hamilton v. Kentucky Distilleries Co., 251 U. S., 146.) The war power of the United States, like its other powers, is subject to applicable constitutional limitations. (Hamilton v. Kentucky Distilleries Co., supra.) This is equivalent to saying that the Constitution is to be construed by all of its parts. But the general principle, stated in McCulloch v. Maryland (4 Wheat., 316, 421), has been uniformly conceded to be the true one in determining the validity of an enactment. The Chief Justice there stated:

"We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

The legislation is not to be measured by the grant of some special power, but by "the scope of the Constitution" itself, because Congress can make laws necessary and proper for carrying into execution the enumerated powers and "all other powers vested by this Constitution in the Government of the United States." Relative to this latter provision, it was said, in United States v. Fisher (2 Cranch, 358, 395)—

"In construing this clause, it would be incorrect and would produce endless difficulties if the opinion should be maintained that no law was authorized which was not indispensably necessery to give effect to a specified power."

As already suggested, there is prohibited to the States, severally, a very important attribute of sovereignty—the right to wage war—and the United States undertakes to defend and protect the State against invasion. And one of the principal purposes of the Constitution is declared, in its preamble, to be to provide for the common defense.

The power to effectuate these objects and guaranties is within the scope of the Constitution and resides, primarily, in the legislative department of the Government. Whatever is necessary to their accomplishment may be done by the Government, because it is not

conceivable that the Constitution fails at the moment of extreme te of the Nation and people it was established to serve.

"Congress has power to declare war and to create and equip armie and navies * * *. Having such powers, it has such other an implied ones as are necessary and appropriate for the purpose carrying the powers expressly given into effect." (United States Gettysburg Ry., 160 U. S., 668, 681.)

The extent of the war power may not be accurately defined. would be unwise to attempt to say in advance what it may b because, as has been said, "war creates its own necessities," and the must be met as they arise. It can, however, be confidently asserte within the scope of the Constitution, that the war power of t United States is at least coextensive with the Nation's right of sel preservation. In view of these powers and the declared purposes the legislation, we can not doubt the existence of the right to fix t prices of coal, as was authorized by the Lever Act or the propriet of its exercise. This price-fixing feature was not a taking of propert within the meaning of the fifth amendment. It in effect declare that certain products had become clothed by the necessity of war an the exigencies of the situation with a public interest. Provision made for requisitioning the plant or business, as well as for purcha ing the entire output. So long as the owner continued to operate, came within the terms of the law, but as was said in Munn v. Illino (94 U. S., 113, 126), "He may withdraw his grant by discontinuin the use, but so long as he maintains the use, he must submit to t control."

The plaintiff insists, however, that the act itself creates a liabili against the United States to pay the difference between the amou realized from sales of its coal at the prices fixed and the amounts would have realized at proper market prices. This liability, it argued, is found in the terms of the act, or, at least, in the intenti of Congress in enacting section 25 of the Lever Act.

The fourth paragraph of section 25 reads:

"That if the prices so fixed, or if in the case of the taking over requisitioning of the mines or business of any such producer or dea the compensation therefor as determined by the provisions of t act, be not satisfactory to the person or persons entitled to rece the same, such person shall be paid seventy-five per centum of t amount so determined, and shall be entitled to sue the United Sta to recover such further sum as, added to said seventy-five per centu will make up such amount as will be just compensation in the ma ner provided by section twenty-four, paragraph twenty, and secti one hundred and forty-five of the Judicial Code."

Plainly this language is not sufficient (except by interpolating phrase not to be found in the act) to create such a liability, as assessed. The plaintiff would have us interpolate certain words to interpret the paragraph as though it read "that if the prices fixed * * * be not satisfactory to the person or persons entit to receive the same, such persons * * * shall be entitled to the United States to recover such further sum as * * * make up such amount as will be just compensation, etc."

It is of prime importance to ascertain and give effect to the legislative intention, but that intention is to be sought primarily in the language of the enactment. The interpretation which plaintiff insists upon imposes a liability on the Government for the difference between the amount realized by producers of coal and coke for their products, when disposed of at Government prices, and the amounts that would have been received from sales at prices determined by the producers, or market conditions. In other words, that Congress intended that the President could fix the maximum prices to be charged by producers of coal and coke when selling it to dealers or consumers, and that such producers could receive the purchase price from these, and then recover from the United States the amounts, including a fair and just profit, which they would have received from dealers and consumers if permitted to dispose of their products in their own way. They would credit, however, the amount received from, or chargeable to, such dealers or consumers.

The act deals with a number of articles which are termed "necessaries." Why it would give a status to coal and coke so different from that given to other necessaries is not made clear by any consideration adduced in argument. The minimum price for wheat was fixed to stimulate production. If the only purpose, as to coal, was to stimulate its production, why was the maximum price, instead of the minimum, prescribed as to that one of the necessaries? The applicable purpose declared in the act was to "establish and maintain Government control of such necessaries during the war," as well as to prevent, locally or generally, scarcity, monopolization, hoarding, and injurious speculation.

Accordingly, section 25 as finally framed makes provision for several contingencies affecting the coal and coke supply.

1. It authorizes the fixing of maximum prices at which these products could be sold.

2. It authorizes the requisitioning and taking over of the plant, business, and all appurtenances thereof, belonging to the producer or dealer, and the operation thereof through governmental agency.

3. It authorizes the President to require any and all producers of coal and coke to sell their entire products only to the United States.

There is an express provision for just compensation to producer or dealer, for the use of the plant, business, etc., that may be taken over, and there are provisions relating to the prices to be paid for the products when required to be sold to the United States alone, and then follows a provision that if the prices so fixed by the "Federal Trade Commission" be unsatisfactory to the producer, he could accept 75 per cent of the amount so determined and recover from the United States such further sum as, added to the 75 per cent, will make such amount as will be "just compensation." The "prices" here referred to, it will be observed, are those to be fixed by the Federal Trade Commission. The fact, however, is that the President did not adopt the Federal Trade Commission as the agency for fixing the price, nor was he required by the act to do so. He proceeded under other provisions of the act. And while there is provi-

sion as to the prices, fixed by the Federal Trade Commission, in the case of taking the entire product by the United States, where can be found any provision relating to the prices to be paid for the entire output, in the event the agency adopted be not the Federal Trade Commission, but, as was the fact, the Fuel Administration? It will be found in the fourth paragraph, above quoted, of the section, if that paragraph be transposed, so as to follow the paragraph authorizing the President to require the sale of the entire products, in designated areas, to the United States. If what is now paragraph 4 be transposed to follow what is now paragraph 6, it will be seen that full operation can be given to the words "that if the prices so fixed," appearing in paragraph 4, which plaintiff insists are meaningless, as they now stand, unless its views be adopted. As has been said the act authorizes the requisitioning of the plant, and also it authorizes the purchasing of the output. In either event, there is an appropriation by the Government; and just compensation is contemplated. There is, accordingly, provision for paying 75 per cent of the amount ascertained if the output is purchased, or 75 per cent of the amount determined for the use of the plant if it be requisitioned, and suit for such additional amount as will, in either case, make "just compensation."

The contention of plaintiff requires an interpolation that a body without legislative powers is not authorized to make. That the transposition of paragraph 4 may be made, in order to effectuate the legislative intention, is clear. Suth. Stat. Const., sec. 260; State v. Turnpike Co., 16 Ohio St., 308, 320; Postmaster General v. Early, 12 Wheat., 136, 152; Church of the Holy Trinity v. United States, 143 U. S., 457.

The construction we adopt accords with the history of the enactment in its course through the two Houses of Congress.

After its passage by the House, and while the bill was under consideration in the Senate, an amendment was offered which furnished a large part of section 25 as finally adopted. This amendment, as originally introduced, was not drawn by its proponent. (Cong. Record, vol. 55, p. 5313.) As first presented on July 12, 1917, it referred to "coal, coke, petroleum, or any of their products," but it was amended so as to omit the products other than coal and coke. (Cong. Record, vol. 55, p. 5311.) In its amended form it provided, in one section, for the fixing of the price of these products whenever sold by producer or dealer, and in another for the requisitioning of the plant or business and the operation of the same by the Government, and, following these, was a third section, which provided for suit against the Government in case the prices fixed or the compensation prescribed for the plant or business were not satisfactory to the person entitled to the same. This proposed amendment is set forth at length in the Record, page 5310. It is noticeable that its third section would logically have followed the fourth section. It is difficult to find, in the debates on the amendment, an indication of a purpose to create a liability on the Government such as is urged in the present case. The proponent of the amendment declared it to be his belief that the operators would be glad to comply with the prices that would be fixed and that he had shown in a former speech

the excessiveness of prices that had been charged for coal and coke. (Cong. Record, p. 5311.) Another Senator who had participated in framing the modified amendment (Cong. Record, p. 5313), addressing himself to the subject of it, said it contemplated that the United States "shall become the owner of all the coal mined and that it shall pay to the coal operators a fair and reasonable price for it, including the cost of production, maintenance, operation, depletion, and depreciation," and then resell the coal. This evidently refers to the feature of the amendment providing for the purchase of the entire output by the Government (sec. 5 of the amendment). Another Senator expressed tersely the view that apparently prevailed when he said: "The Government must either control the prices or purchase the coal and then set it moving. * * * This bill provides in the alternative for both of these plans." (Cong. Record, p. 5320.) The amendment was adopted and became substantially section 22 of the bill as passed by the Senate and as it went to conference.

Many changes had been made in the bill, and the committee of conference dealt with these, among them No. 69, being the section added by the Senate as section 22. The conference report (Cong. Record, p. 5733) shows that in lieu of the Senate amendment there was inserted section 25 as it now appears in the act. The statement of the managers on the part of the House, which was made in accordance with the House rule, providing for a statement to accompany a conference report, and intended to acquaint the Members with the effect of the report, states (Cong. Record, p. 5738) that the Senate amendment inserted a new section "providing for comprehensive governmental control of the coal and coke business, including the fixing and regulating of prices, the requisitioning and operating of plants and business, the governmental purchase and sale of coal and coke, and a detailed investigation of the coal and coke business," and added:

"The House recedes and agrees with an amendment changing the section number to 25; limiting the operation of the section to the period of the war; extending the power of regulation by the President to include the method of production in addition to the sale, shipment, distribution, apportionment or storage of coal and coke; eliminating recourse to the Board of Mediation and Conciliation by any person dissatisfied with wages fixed by the President; reducing the amount to be paid to any person dissatisfied with the compensation fixed in the exercise of the requisitioning or purchasing power to 75 per cent instead of the entire amount, with the right to sue the United States to recover such further sum as added to said 75 per cent will constitute just compensation; eliminating the provision that there shall be but one dealer between the producer and consumer in fixing maximum prices for dealers; and making other changes of a minor or incidental nature."

The history of the act and the statement to the House clearly show that the part of the amendment as originally introduced in the Senate, which refers to suits against the United States for compensation additional to that resulting from fixed prices, was dealt with by an elimination of that feature, and there was provided a right to

accept 75 per cent of the compensation "fixed in the exercise of the requisitioning or purchasing power," and to sue for such additional sum as would give just compensation. The section, as rewritten, omits the statement originally therein of the reason for its enactment and leaves the general and more comprehensive purpose as stated in the first section of the act to apply. But the section as rewritten also deals, as has been mentioned, with two classes of taking and price fixing—the one referring to the requisitioning of the plant or business, and the other to the purchasing of the entire output of the producer. The statement of the managers on the part of the House acquaints the Members with this condition, but makes no mention of any provision or purpose, in the act, to subject the Government to liability on account of the fixing of prices between producer or dealer and consumer.

The court is not warranted in importing phrases into the act that will make it mean something different from what it says and different from what the House Members were told it meant; nor can the court say that, because the act contains words that appeared in the amendment as it passed the Senate, the related words that were therein should be considered as still a part of the section, when, as a matter of fact, the amendment was dealt with, changed in conference, and the entire scope of the related words was materially altered.

It is our conclusion that the Lever Act does not create a liability on the United States to producers of coal who sold their product at prices fixed by the Government, and it follows that the demurrer should be sustained. And it is so ordered.

Graham, *Judge;* Hay, *Judge;* Downey, *Judge;* and Booth, *Judge,* concur.

VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Fourteenth day of June, A. D. 1920, judgment was ordered to be entered as follows:

This case was submitted upon the defendants' demurrer to the claimant's petition, on consideration whereof the court is of the opinion that the demurrer is well taken.

It is therefore ordered, adjudged and decreed that the defendants' demurrer to the plaintiff's petition be sustained, and that the petition be and the same is hereby dismissed.

BY THE COURT.

VII. *Claimant's Application for and Allowance of an Appeal.*

Pine Hill Coal Company, Inc., the above named Claimant by its attorney, Henry S. Drinker, Jr., Esq., gives notice and makes application to the Court for an allowance of an appeal in the above-entitled case to the Supreme Court of the United States from the judgment of this Court sustaining the demurrer and dismissing

Claimant's petition, and shows that the amount involved in the said case is in excess of $3,000.00.

HENRY S. DRINKER, JR.,
Attorney for Claimant.

Filed June 30, 1920.

Allowed.

EDWARD K. CAMPBELL,
Chief Justice.

June 30/20.

Court of Claims.

No. 34202.

PINE HILL COAL COMPANY, INC.,

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case on demurrer; of the opinion of the court by Campbell, Ch., J.; of the judgment of the court; of the application of the claimant for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this First day of July, A. D. 1920.

[Seal Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 27,798. Court of Claims. Term No. 441. Pine Hill Coal Company, Inc., appellant, vs. The United States. Filed July 10th, 1920. File No. 27,798.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921. No. 101

Pine Hill Coal Company, Inc., Appellant

vs.

The United States

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR APPELLANT

STATEMENT OF THE CASE.

This is an action under Section 25 of the Lever Act, by a producer of coal which sold its coal during 1917 and 1918 at the prices prescribed by the President, to recover from the United States an amount sufficient to be just compensation as therein defined, that is to say, an amount sufficient to recoup to the producer,

> "the cost of production, including the expense of operation, maintenance, depreciation and depletion," and in addition "a just and reasonable profit."

It is not a suit based on a taking of Claimant's property by the Government, but for the fulfilment of a contractual guaranty by the United States, held out as a stimulus to the production of commodities essential to the efficient prosecution of the late war.

The petition avers that the Claimant is a corporation engaged in the business of mining anthracite coal, that under authority of the Lever Act prices of anthracite coal were fixed by the President, that the Claimant sold its coal at the prices fixed, that the prices fixed were unreasonably low, that as a result of the said observance of prices, as required by the Government during the 17 months in which they were in effect, the Claimant not only failed to make any profit whatever upon its mining operations, but actually suffered a loss. Its receipts from mining operations were less than the cost of production of the coal, although its mine was efficiently operated.

The Government demurred to the petition, and the Court of Claims sustained the demurrer and entered judgment against the Claimant. From this judgment the present appeal is taken.

The sole question before this Court is whether the Claimant has a cause of action against the United States.

When a coal operator has sold his coal at the price fixed by the President under the Lever Act,

and his receipts from sales have not been sufficient to meet the cost of production, under economical and efficient management, does the Lever Act give him any right of recovery from the United States?

Our position is that a proper construction of paragraph 4 of Section 25 of the Lever Act (40 Stats. at Large 276), approved August 10, 1917, gives this precise right to the Claimant.

The Government differs from us in the construction of the Act in question, and takes the position that the Claimant has no cause of action.

ARGUMENT.

Scope and Purpose of the Lever Act

Before taking up the analysis of the section of the Act upon which the claimant's right rests, we wish to call the attention of the Court to certain other important features of the Act which throw material light upon the proper construction to be given this section.

The Lever Act was a purely war measure Its purpose is concisely stated in its title:

> "An Act to provide further for the national security and defence by **encouraging the production,** conserving the supply, and controlling the distribution of food products and fuel."

In the summer of 1917, when this Act was passed, Congress recognized, from the experience of our Allies, that a prime essential to win the war was an abundant food and fuel supply, efficiently distributed, and as applied to producers of fuel, such as this Claimant, **the purpose of the Act was to stimulate maximum production.**

The conservation of supply referred to was only a supply already mined, which could presently be used as fuel, not a supply underground.

Section 1 of the Act further explains its scope and purpose.

> "That by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support of the Army and Navy to **assure an adequate supply** and equitable distribution, and to facilitate the movement, of foods, feeds, fuel including fuel oil and natural gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery and equipment required for the actual production of foods, feeds and fuel, hereafter in this Act called necessaries; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulations and private control, affecting such supply, distribution and movement; and to establish and maintain governmental control of such necessaries during the war. For such purposes the instru-

> mentalities, means, methods, powers, authorities, duties, obligations and prohibitions hereafter set forth are created, established, conferred and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provision of this Act."

It requires no argument to demonstrate that, as applied to a producer of coal, the purpose of the Act was "to assure an adequate supply."

The only way in which a coal operator could hoard his product would be to leave it unmined. The provisions relative to distribution could apply only after the mining company got the coal above ground.

Obviously the easiest way to stimulate production would be to permit or enable the producer to get high prices for the coal mined. But not only would these high prices act as a deterrent on the manufacturer who expected to use the coal in the production of essential materials of war, but they would also antagonize the public against the government which permitted the existence of such prices, and the discontent thus engendered would severely injure the morale of the nation.

Congress was thus face to face with a serious problem concerning fuel regulation, and that problem must be understood and appreciated before

the solution provided in the Lever Act can be properly construed. If prices were fixed too high, the householder and manufacturer would have been justly aroused, and the public would have had to bear an unnecessary increase in the then rapidly mounting cost of the war. If prices were fixed too low, there was the probability either that the high cost operators would be forced to close their coal mines, thus endangering the supply of coal for war purposes, or else that they might apply to the Courts to enjoin the low prices as confiscatory, and before the matter could have been finally settled, the war would have been over and the whole purpose of regulation unaccomplished.

An additional difficulty in the fixing of fair prices was the fact that the cost of mining necessarily varied not only as between different regions, but as between different operators in the same locality, and what might be a fair price for one would not be for another.

The best solution of this problem obviously was for the Government to fix the price of coal at an average figure low enough to stimulate its use in manufacture, thus securing for all an adequate supply at a fixed reasonable price, keeping contented the householder who used it as fuel, and at the same time to guaranty to any particular producer of coal who was required to sell his

product at the fixed price, that if the latter were not sufficient to cover his actual cost of production plus a fair profit, the United States would make up the difference.

This solution would protect the public from exorbitant prices, insure an adequate supply by guaranteeing a fair price to every producer, and render it impossible for the Government's regulative program to be interfered with by injunctions or applications for injunctions.

It is, we submit, exactly the solution which Congress intended to adopt and did in fact adopt in Sec. 25 of the Lever Act.

The Provisions of the Statute

We have annexed the text of the Lever Act in full to this brief as "Appendix B" (p. 83).

The first 24 sections deal generally with food and fuel, but the 25th section (p. 97) is directed particularly to coal and in itself provides a complete system for the war time regulation of the coal industry.

This section regulates two alternative situations —(1) relations between producer and consumer of coal, to which the United States is not a party, and (2) relations between the United States and producers of coal which the United States needs to acquire.

The various paragraphs of this section are closely interrelated, and each has a material bearing on the meaning and application of each other.

Paragraph 1 applies only as between producer and consumer. It authorizes the President to

> "Fix the price of coal and coke, wherever and whenever sold, either by producer or dealer."

It was under the above authority that the President, through Dr. Garfield, actually acted in fixing the coal prices to recover the deficiency in which this action is brought.

Paragraphs 2 and 3 apply only as between the United States and the producer of coal. Paragraph 2 authorizes the President to take over and operate any coal mines, and paragraph 3 requires that just compensation shall be paid to any operator whose mines have been taken over. Both of these paragraphs are regulative and not remedial. As far as we know, the authority given in these paragraphs was never exercised. At least it was not exercised in relation to this claimant.

Then comes paragraph 4, which is the one upon the construction of which the present case must turn. This paragraph is the remedial paragraph and applies to both the alternative situations regulated in paragraph 1 and paragraphs 2 and 3 respectively.

The material words of paragraph 4 are as follows:

> "If the prices so fixed, or if, in the case of the taking over * * * of the mines * * *

> the compensation therefor as determined by the provisions of this Act be not satisfactory to the person * * * entitled to the same, such person shall be paid 75% of the amount so determined" and may sue the United States for the balance.[1]

It will again be noted that this paragraph contemplates and provides a judicial remedy for two entirely different situations, the one where *prices are fixed* on sales between individuals, to which the United States is not a party, and the other where *compensation is determined* for the taking over of mines or business by the United States. In the former case no part of the fixed price of the coal would be payable by the United States; in the latter case all the compensation would be payable by the United States.

As to compensation for taking over the mines, this paragraph is quite clear. But as to the rights of the seller of coal when prices have been fixed it is not only ambiguous, but we submit it is mean-

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[1] The text in full of this paragraph is as follows:

That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

ingless unless we add some words which are not now there.

Analyzing the paragraph grammatically, we find that it consists of a single sentence, made up of two alternative conditional clauses, followed by the principal or independent clause, as follows:

If the prices so fixed (be not satisfactory to the person or persons entitled to receive the same),

or

if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same,

such person shall be paid 75% of the amount so determined and shall be entitled to sue the United States to recover, etc.

The first conditional clause refers to the situation regulated in paragraph 1 (that between producer and consumer); the second conditional clause refers to the situation regulated in para-

graphs 2 and 3 (that between the United States and the producer); and the principal or independent clause attempts to give a remedy applicable to either of the alternative situations described in the two conditional clauses.

But the phrase "75% of the amount so determined" in the principal clause refers only to the second conditional clause, the "amount so determined" being the "compensation therefor as determined by the provisions of this Act." This phrase "75% of the amount so determined", of the principal clause as it stands makes no reference to prices fixed, and there is nothing in the principal clause specifying what is to occur when the prices fixed are unsatisfactory to the person entitled to receive them.

In other words, although the second conditional clause and the principal clause taken together are perfectly intelligible and the meaning perfectly clear, yet when the principal clause and the first conditional clause are taken together, they are, as admitted in the brief of the Government (p. 14) "awkward and obscure," and "some astuteness in construction" is necessary.

A careful study of the text will show that there are four possible constructions which could be given to this paragraph, and, after indicating what they are, we shall discuss these constructions in order.

They are the following:

A. The first five words, namely "That if the prices so fixed or" could be disregarded and ignored, as if the Act had read thus:

> "* * * * If, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation" etc.

This by eliminating entirely the first conditional clause, would make the meaning clear and confine the application of this remedial paragraph solely to cases where the Government took over mines and business. The owner would be paid by the Government 75% of the compensation as determined under the Act and would sue for the balance. It would give no rights whatever to the operator who sold coal to other individuals at the prices fixed.

B. The word "so" could be eliminated and the words "as hereafter provided in paragraph six

hereof" inserted in the first conditional clause so that the paragraph would read:

> "That if the prices * * * fixed *as hereafter provided in paragraph six hereof*, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation" etc.

This construction would confine the remedy to cases where prices were fixed on coal requisitioned by the United States, and it would have no application and give no rights on sales of coal made between producer and consumer.

C. It could be construed as if the words "of the prices so fixed or" had been inserted in the principal clause and as if the Act had read thus:

> "That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled

> to receive the same, such person shall be paid seventy-five per centum *of the prices so fixed or* of the amount so determined, and shall be entitled to sue the United States to recover such further sum, as, added to said seventy-five per centum, will make up such amount as will be just compensation," etc.

This would mean that when prices unsatisfactory to the seller were fixed for sales from producer to consumer, the producer would receive from his purchaser only 75% of the price fixed, and would recover from the United States the balance of a reasonable price; similarly that when the United States took over the mines, the owner would receive from the United States 75% of the compensation determined by the President and sue the United States for the balance.

D. The Court might construe the paragraph as meaning that the 75% clause applied only to takings by the United States and not to sales between individuals at the fixed prices. That is to say as though the Act read thus with the italicized words inserted:

> "That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons

> entitled to receive the same, such person shall be paid *the prices so fixed or* seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum, as added to *the said prices or* said seventy-five per centum will make up such amount as will be just compensation," etc.

This construction would mean that when the prices fixed for sales from one individual to another were unsatisfactory to the seller, he would receive from his purchaser the whole of the price fixed' and could sue the United States for the difference between that and a fair price, and that when the United States took over a mine and determined a compensation therefor unsatisfactory to the owner he would receive 75% of the amount determined and sue the United States for the difference between that and a fair price.

Any one of the four constructions suggested above necessitate the elimination or the insertion of certain words to make the meaning clear. There is no construction which can be adopted without making *some* change in the text.

Construction A

The possibility of adopting this construction (involving as it does, disregarding completely the first conditional clause in the sentence) can, we believe, be dismissed without much discussion.

Certainly the opening words of the paragraph were not intended to be meaningless.

And particularly is this true when these words are "If the prices *so* fixed," and the preceding paragraph 1 authorizes the fixing of prices.

Clearly, therefore, these words must have some meaning, and we must turn to some other construction which will correctly interpret that meaning.

Construction B

This construction would be that the "prices so fixed" means the "prices hereinafter fixed" and refers exclusively to prices fixed when the United States takes over the coal or the mines.

This is the construction which was adopted by the Court of Claims and which is argued by the Government on the present appeal.

In considering this possible construction it is again necessary to keep clearly in mind the various regulative and remedial paragraphs of this section, and the relative position in the Act of these respective paragraphs.

There are three regulative paragraphs of Section 25, as follows:

1. Paragraph 1, where authority is given to **fix prices** between producer and consumer.

2. Paragraphs 2 and 3 where authority is given for the United States to take over the mines and fix compensation to be paid the owner by the United States.

3. Paragraphs 6 and 7 where authority is given to require all producers to sell their product only to the United States and at a price to be fixed and paid by the United States.

Each of these regulative paragraphs is in turn followed by a remedial paragraph, giving a remedy to the producer in case prices or compensation should be fixed too low, and the language of each remedial paragraph refers back in unmistakable terms to the regulative paragraph to which it is to apply.

Thus paragraph 8 follows and refers to the regulative paragraphs 6 and 7, and paragraph 4 follows and refers in the alternative to paragraph 1, and paragraphs 2 and 3.

The text of these various paragraphs shows beyond any question that the remedial paragraphs 4 and 8 were each intended to refer exclusively to several regulative paragraphs preceding them.

For example, paragraph 6 authorizes the President to require producers of coal to "sell their products" only to the United States. Then comes the remedial paragraph 8 which provides for fair prices to be paid "for *such* products *so* purchased," and gives the right to sue the United States if the prices "of any *such* product" be unsatisfactory.

Thus by paragraphs 6 and 8 there is provided a complete and exclusive method of regulation in the event that the United States should take over all the coal produced.

So too is the remedial paragraph 4 by its second conditional clause tied up with the regulative paragraphs 2 and 3. Paragraphs 2 and 3 authorize the President to "requisition and take over" the mines and to fix a "just compensation." Then the following remedial paragraph 4 provides a right of suit against the United States if the "compensation" for the "taking over or requisitioning" of the mines be unsatisfactory.

Similarly the remedial paragraph 4, by its first conditional clause is tied up with paragraph 1. Paragraph 1 authorizes the President to "fix the price" of coal as between producer and consumer, and this is in turn followed by paragraph 4 providing a remedy "if the prices *so* fixed" be unsatisfactory.

It is clear then that each of the remedial paragraphs 4 and 8 not only by reason of their position in the text, but by the internal references, refer unmistakably and exclusively to the *preceding* regulative paragraphs.

The suggested Construction B of section 4, namely that the words "prices so fixed" refer only to prices fixed when the United States takes the coal, runs directly up against the fact that the situation where the United States takes the coal is completely regulated in paragraphs, 6, 7 and 8 and a complete remedy is there given to the producer whose prices are fixed too low. The

whole subject being completely covered in these three paragraphs, why should any reference to it be made in a preceding paragraph?

It seems clear that the words "prices so fixed" in paragraph 4 for this reason cannot be said to refer to the fixing of prices in paragraph 6 where the United States takes the coal.

The Court of Claims in its opinion (R. p. 46) concedes that this construction can only be adopted if paragraph 4 is transposed so as to follow paragraph 6. But why should this be done, when paragraph 8 which actually does follow paragraph 6 specifically refers to the regulative provisions of paragraph 6 and provides a complete remedy for any abuse of the powers there conferred?

If there were no other price fixing paragraphs in Section 25 except paragraph 6, then it might be necessary to make the transposition. But, as we have shown, there are price fixing provisions in paragraph 1 which *precede* paragraph 4. In such case, not only is it unnecessary to make the transposition, but to do so would violate the evident intention of the Act.

On page 13 of the Government's brief in this case it is argued that under a broad construction of paragraph 2 the President would be authorized to compel producers to sell their coal to the United States and that the words in paragraph

4 "the prices so fixed" would then refer to the price to be paid for such coal.

But this argument also overlooks the fact that paragraph 6 provides expressly for the very thing which the Government says paragraph 2 could be stretched to mean. There can therefore be no excuse for altering by implication the clear express powers of paragraph 2.

This being true, we revert to the proposition previously stated, that there is no price fixing authorized for coal taken by the United States to which the words "if the prices so fixed" of paragraph 4 could possibly apply.

These words of paragraph 4 must then refer to the price fixing as between producer and consumer authorized in paragraph 1, and must have been intended to give some remedy to the producer when such prices were fixed too low. The question is: *what* rights are so given?

Construction C

Under this construction the producer who was dissatisfied with the Government price would collect only 75% of that price from his purchaser and sue the United States for the difference between that 75% and a fair price.

By the insertion of the words as suggested on p. 13, *supra*, it would be possible to adopt this

construction without violating the language of the other paragraphs of the section.

But could any one for a moment entertain the thought that Congress intended any such result? As conceded in the brief of the Government (p. 15), such construction would be "an obvious absurdity."

Construction D

By process of elimination, it is seen that the only possible construction which can be applied to this paragraph is that when the prices fixed between producer and consumer are not satisfactory to the producer, he may collect from his purchaser the whole of the price fixed, and sue the United States for the difference between that and a fair price.

This is the construction of the paragraph which we believe to be the correct one.

It gives effect to all the words of the paragraph, it is in perfect harmony with the other paragraphs of the same section, and it is the only construction which could properly effectuate the evident intention of Congress in enacting this legislation.

There is less difficulty in the text of the Act in the way of adopting this construction than any other of those suggested.

When applied to price fixing under paragraph 1 of this section, the provisions relating to para-

graphs 2 and 3 concerning the compensation determined on takings by the United States must be omitted so that paragraph 4 would read:

> "That if the prices so fixed * * * be not satisfactory to the person or persons entitled to receive the same, such person * * * shall be entitled to sue the United States to recover such further sum as * * * will make up such amount as will be just compensation," etc.

Or, referring to the grammatical analysis on p. 10 hereof, it is only necessary to continue the alternative nature of the sentence throughout the principal clause by repeating "the prices so fixed" in that clause, making the whole sentence read as follows:—

> "That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act, be not satisfactory to the person or persons entitled to receive the same, such person shall be paid *the prices so fixed or* 75% of the amount so determined, and shall be entitled to sue the United States to recover such further sum, as added to *the said prices or* said 75% will make up such amount as will be just compensation," etc.

In order to support the construction urged by us it is entirely unnecessary to add the long clause suggested by the Government on page 16 of their brief.

Whatever doubt as to the construction of this paragraph may remain after a mere reading of the text of the Act, is removed by a study of the history of the passage of the Lever Act, as shown by the record of the proceeding in Congress.

When its history is so traced there can be no possible doubt as to what remedy Congress actually intended to provide, and it did in fact provide for a situation like that presented in the case at bar.

History of the Lever Act

The Lever Act as it originally passed the House on June 23, 1917 (Con. Rec. Vol. 55, p. 4190), covered substantially what is now included in Sections 1-24 (inc.) of the Act. It dealt with food and fuel together and precisely the same regulations were applicable to each commodity.

The Senate on July 21, 1917, passed the bill with some seventy amendments (Con. Rec. Vol. 55, p. 5367). The House on July 25, 1917, disagreed to the Senate's amendments, and the bill was then referred to a conference committee consisting of members from each house (Con. Rec. Vol. 55, pp. 5367 and 5473). The conference

report was submitted to each house, on Aug. 2 (Con. Rec. pp. 5709 and 5733) and adopted by each. In the form recommended by the conference committee (Con. Rec. Vol. 55, p. 5775) the bill finally passed the House on August 3 (Con. Rec. Vol. 55, p. 5767) the Senate on August 8 (Con. Rec. Vol. 55, p. 5927) and was approved by the President August 10, 1917.

Section 25 of the present Act first appeared as Senate amendment No. 69 to the bill, introduced by Senator Pomerene on July 20 (Con. Rec. Vol. 55, p. 5310) and adopted by the Senate July 21 (Con. Rec. Vol. 55, p. 5362), on the day of and just prior to the passage by the Senate of the amended bill. The Pomerene amendment was revised by the Conference Committee, and was then adopted by both houses and now appears as Section 25 of the Act exactly in the form recommended by the Conference Committee.

The Conference report was adopted without debate and the whole bears evidence of haste, as the legislation was immediately necessary and there was no time for polishing.

The seventy-three amendments which had been inserted by the Senate were considered and passed on by the Committee between July 25th and August 2nd.

For convenience of reference there is annexed hereto as "Appendix A" (p. 49) an exact copy

of the bill as ordered to be printed by the House on July 23, 1917, upon its return thereto by the Senate. This appendix shows the text of the Act as it passed the House on June 23, as well as the seventy-three amendments thereto adopted by the Senate. In the form shown in "Appendix A" the bill went to the Conference Committee.

As passed by the Senate on July 20, 1917 (Cong. Rec. p. 5361-2) the first four paragraphs of what is now Sec. 25 of the Act (omitting one paragraph relative to wage fixing which was subsequently eliminated), read as follows (p. 75 hereof):—

> "That it is necessary and proper, in order to execute the powers of Congress to raise and support armies, provide and maintain the navy, and properly and efficiently provide for the common defence that the President of the United States shall be, and he is hereby, authorized and empowered, whenever, and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of sale, transportation, distribution, apportionment, or storage thereof among merchants and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission, during the war and for a period of one year thereafter, or for such part of said time as in his judgment may be necessary.

"That if, in the opinion of the President, any such producer or dealer fails or neglects to conform to such prices or regulations, or to conduct his business efficiently under the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such agency as he may direct during the period of the war and one year thereafter, or for such part of said time as in his judgment may be necessary.

"That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer, the compensation or damages fixed be not satisfactory to the person or persons entitled to the same, such person or persons shall be paid the amount prescribed by the President and shall be entitled to sue the United States to recover such other sum as, added to the amount so paid, will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

"That any producer or dealer whose plant, business, and appurtenances shall have been requisitioned or taken over by the President

shall be paid a fair and reasonable compensation for the use thereof or for damages incurred thereby during the period that the same may be requisitioned or taken over as aforesaid, which compensation and damages the President shall fix or cause to be fixed by the Federal Trade Commission or such other agent or agencies as he may designate."

In the final draft the order of the paragraphs was transposed and the fourth paragraph above quoted became paragraph three.

The foregoing provisions, as applied to a producer of coal, are perfectly clear.

The first two paragraphs deal with two separate situations, the one where the President fixes the price at which producers or dealers were required to sell to the public, and the second where the President takes over and operates a mine.

The third paragraph provides a remedy to the dissatisfied producer in each of the two cases covered by the first and second paragraphs.

> "**That if the prices so fixed** or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer, the compensation or damages fixed **be not satisfactory to the person or persons entitled to the same, such person or persons shall be paid the amount prescribed by the President and shall be entitled to sue the United States to recover such other sum as, added to the amount so paid, will be just compensation**" etc.

The words "amount prescribed by the President," were carefully chosen to include both the "prices so fixed" and the "compensation or damages fixed"; in either case the producer was to receive either the price or the compensation and to have his action against the United States for the balance.

There can be no possible doubt but that the Senate in adopting this provision contemplated precisely the situation which has arisen in the present case, and intended to give precisely the remedy which is here sought to be enforced.

In the passage through Congress the first two paragraphs above quoted were not materially changed, there being merely certain verbal alterations and the omission of the preamble.

The paragraph giving the remedy to the producer was, however, changed by the Conference Committee into what is now paragraph 4 of Section 25 of the Act (see p. 40 for text).

The reason for this alteration is apparent from a consideration of the other amendments to the bill which had been proposed by the Senate and were agreed to in the Conference Committee.

The Lever Act contains a number of clauses authorizing the fixing of prices by the President or other Governmental authority. But it will be noted that, with one exception, in every case where price fixing is authorized, the purchaser is the United States. This single exception is the

authorization to fix price of coal and coke "whenever and wherever sold" in paragraph 1 of Section 25, which is the price fixing upon which this action is based.

The Act as passed contains six price fixing sections, as follows:—

(1) Sec. 10. authorizes the President to requisition foods, feeds and fuel for the Army and Navy, and directs him to "ascertain and pay a just compensation therefor" (p. 88 hereof).

(2) Sec. 12. authorizes the President to requisition for the use of the Government any factory, mine, plant, etc., and directs him to "make just compensation for the use" (p. 89 hereof).

(3) Sec. 16. authorizes the President to commandeer such distilled spirits as are needed to supply the Government requirements, and directs him to "pay a just compensation for the distilled spirits so commandeered" (p. 95 hereof).

(4) Sec. 25. in paragraph 1 authorizes the President to fix the price of coal and coke "wherever and whenever sold" (p. 97 hereof).

(5) Sec. 25. in paragraph 2 authorizes the President to requisition the plant of any producer who fails to conform to the regulations or conducts his business inefficiently, and in paragraph 3, directs that such producer shall be paid "a just compensation for the use" of his plant (p. 97 hereof).

(6) Sec. 25 in paragraph 6 authorizes the President to require all producers of coal to sell their products only to the United States and in paragraph 8 directs that the prices to be paid for such products shall be based upon cost of production plus a fair profit (p. 98 hereof).

Of these price fixing clauses all but the fourth deal with cases where the United States is to take and pay for the commodity or plant.

The bill as it originally passed the House contained only the first three of these price fixing authorizations (pp. 61, 63 and 72 hereof) substantially as they now appear in Secs. 10, 12, 16 of the final act. But each of these clauses was immediately followed by a provision that if the price or compensation should not be satisfactory to the person entitled thereto, such person should be paid the whole of the amount prescribed by the President and should be entitled to sue the United States to recover the difference between that and a fair price.

In the Senate all three of these provisions were amended to provide that the person whose property was requisitioned or commandeered should, if dissatisfied with the compensation offered, be paid **but 75% thereof**, and sue the United States for the difference.

The day before the bill passed the Senate the last three price fixing authorizations were intro-

duced by Senator Pomerene's amendment (pp. 75, 76 and 77 hereof) substantially as they now appear in paragraphs 1, 2 and 6 of Section 25. The first two of these were followed by paragraph 4, above quoted, and the last was followed by paragraph 8 which only allowed 75% if the owner was dissatisfied with the Administrative price fixed.

It will thus be observed that when the amended bill went to the Conference Committee the 75% provision had been introduced by the Senate in Sections 10, 12 and 16, as well as in paragraph 8 of the Pomerene amendment (then Section 22) but not yet in the paragraph giving the remedy here invoked.

In the Conference Committee the House members agreed to the Senate's amendments inserting the 75% clause in the provisions originally introduced in the House, and the Pomerene amendment was thereupon similarly changed by the insertion of a 75% clause in paragraph 4.

It is quite evident why paragraph 4 of the final act was changed in the Conference Committee from the original draft as offered by Senator Pomerene and as adopted by the Senate. Of the six price fixing provisions of the whole Act, four of them (each of the four dealing solely with takings by the United States) had then been amended by insertion of the 75% clause. The only price fixing provisions which did not at that time have

the 75% clause annexed were those which now appear in paragraphs 1 and 2 of Section 25, and as we have already shown, one of these (paragraph 2) deals with takings by the United States while the other (paragraph 1) deals with prices between producer and consumer.

In order to make uniform all the provisions regarding takings by the United States, what is now paragraph 4 was amended by inserting the 75% clause, however, making it entirely clear on its face that this clause was to be confined to takings by the Government authorized in paragraph 2.

That such, however, was the purpose of the Conference Committee is conclusively shown from the statement of the House Managers to the House (Con. Rec. Vol. 55, p. 5736), where in recommending the changes suggested in conference as to Senator Pomerene's amendment (now Sec. 25) they said:

> "The managers on the part of the House * * * submit the following written statement in explanation of the effect of the action agreed upon by the conference committee * * * as to each of the amendments of the Senate, namely:
>
> * * * * *
>
> "Amendment No. 69: This amendment inserts a new section 22, providing for comprehensive governmental control of the coal

and coke business, including the fixing and regulating of prices, the requisitioning and operating of plants and businesses, the governmental purchase and sale of coal and coke, and a detailed investigation of the coal and coke business. The House recedes and agrees with an amendment changing the section number to 25; limiting the operation of the section to the period of the war; extending the power of regulation by the President to include the method of production, in addition to the sale, shipment, distribution, apportionment, or storage, of coal and coke; eliminating recourse to the Board of Mediation and Conciliation by any person dissatisfied with wages fixed by the President; **reducing the amount to be paid to any person dissatisfied with the compensation fixed in the exercise of the requisitioning or purchasing power to 75 per cent. instead of the entire amount, with the right to sue the United States to recover such further sum as added to said 75 per cent. will constitute just compensation;** eliminating the provision that there shall be but one dealer between the producer and consumer in fixing maximum prices for dealers; **and making other changes of a minor or incidental nature."**

In the first sentence of the paragraph of this Statement relative to Senate Amendment No. 69, the House Managers refer briefly to the nature of the Senate Amendment, for the purpose of identification. Then in the second sentence they

enumerate specifically the change or amendment made by the Conference Committee to the Amendment and recommend that the House adopt it as thus revised.

As passed by the Senate and as it went to the conference Committee one of the absolutely clear provisions of this section of the act was that there should be just such a right as is here sought to be enforced. Then the Conference managers proceed to itemize the changes in the amendment which were agreed upon by the Conference Committee. One of these changes is the insertion of the 75% clause as applicable to cases arising under "the requisitioning or purchasing power" of the United States. **Not a word is said about any change as applied to rights of producers of coal where prices are fixed between them and consumers.**

The original Senate amendment No. 69 having given such producers the undoubted right to sue the United States if the prices fixed between them and consumers were unsatisfactory, if the Conference Committee intended to wipe out this right, would they not have so explained to the House? Yet there is no such statement in the report.

If it was intended to eliminate this right, why did not the Committee strike out the words "If the prices so fixed or," thus removing the alternative nature of the remedial paragraph 4, and clearly confining it to takings by the United States?

The Court of Claims seemed to be of the opinion (Record p. 47, 48) that this statement of the House Managers shows there was no intention on their part to give the producers of coal any right against the United States where prices were fixed as between producer and consumer.

To our mind the report demonstrates just the opposite conclusion.

On the face of the Statement by the House Managers it plainly appears that they were not attempting to explain to the House the nature of the various Senate Amendments to the House bill, but, to use their own words, they were submitting an **"explanation of the effect of the action agreed upon by the conference committee."**

The action so agreed upon by the Conference Committee as to this Senate Amendment No. 69 is thus described by the House Managers: The original Senate Amendment is to be amended:

(1) by "changing the section number to 25;"

(2) by "limiting the operation * * * to the period of the war."

(3) by "extending the * * * regulations * * * to include the method of production."

(4) by "eliminating recourse to the Board of Mediation and Control."

(5) by "reducing the amount paid to any per-

son dissatisfied with the compensation fixed in the exercise of the requisitioning or purchasing power to 75 per cent. * * *"

(6) by "eliminating the provision that there shall be but one dealer between the producer and consumer * * *"

(7) and by "making other changes of a minor or incidental nature."

The foregoing list consists entirely of changes made by the Conference Committee in Senate Amendment No. 69. These changes represent the amendment recommended by the Conference Committee to Senate Amendment No. 69, and the Statement of the House Managers so declares in clear terms.

In other words, the House Managers recommended that the Senate Amendment No. 69 be agreed to by the House, **with the seven changes specifically mentioned.**

That the House Managers in their Statement were itemizing and referring, not to the original Senate Amendment No. 69 itself, but only to the **changes** made by the Conference Committee in the Amendment, is demonstrated by a mere reading of the Statement.

A comparison of the provisions of this section as it appeared in Senate Amendment No. 69 (See p. 75 hereof), and as it was recommended for passage by the Conference Committee and

now appears in the Act as passed (p. 97 hereof) will show that every change made is mentioned in the Statement of the House Managers, and that no change was made other than those so referred to.

The Court of Claims erroneously assumed that the purpose of the Statement of the House Managers was to acquaint the members of the House with the changes wrought in the original House Bill by Senate Amendment No. 69. Not at all. The purpose of the Statement was to show the House the changes wrought by the Conference Committee to Senate Amendment No. 69.

Thus the omission in the Statement of any reference to the rights of a producer whose prices were fixed on sales to others than the United States, far from meaning that no rights were meant to be given, means that no change was intended to be made in the rights as originally provided.

The only change reported was concerning takings by the United States, in which case the 75% clause was to be inserted.

The clear inference is that the rights of the producer in other cases were to be left as they had been originally. This, admittedly, meant that he had a right to recover the price fixed from his purchaser and to sue the United States for the difference between that and a just price.

At the close of the above quoted statement by the House Managers it is stated that in addition to the six material changes specifically mentioned, the Committee has made "other changes of a minor or incidental nature" in this section.

This shows conclusively that the House Managers intended to call the attention of the House to all the changes made by the Committee in the section as it had been before both Houses and adopted by the Senate; all the important changes were specifically mentioned in the report and minor changes were referred to as above quoted.

It cannot be reasonably contended that the complete elimination of a right previously clearly and expressly given to a producer to sue for fair prices on sales other than to the United States would be merely a change of a "minor or incidental nature." The inevitable conclusion to be drawn from the omission to refer to any change in such rights, is that no such change was intended to be made.

The framers of the original bill foresaw the possibility that the prices might in some cases be too low, and put in the express provision authorizing suit against the United States to recover any deficiency. The Administrative price fixing was thus in every case made subject to review by the Court on the question of the fair-

ness or reasonableness of the price fixed and was coupled with a guaranty by the United States of an additional sum to make just compensation.

The additional 75% provision as applied to the five clauses in the Act which concern the taking of property by the United States is entirely proper and workable, in that while it protects the rights of the owner, it encourages a speedy and final administrative settlement, barring recourse to the Courts.

But as applied to prices fixed for sales from one individual to another, such a provision would be impossible, or at least is so impracticable that only the clearest possible language would justify the Court in so applying it.

In order that the change brought about by the insertion of the 75% provision in the paragraph here under discussion may be more easily grasped, we print in parallel columns the provisions as originally adopted by the Senate and the provision of the Act as finally passed.

As adopted by the Senate on July 21, 1917.
(See page 75 hereof)

That it is necessary and proper, in order to execute the powers of Congress to raise and support armies, provide and maintain the Navy, and properly and efficiently provide for the common defense, that the President of the United States shall be, and he is hereby authorized and empowered, whenever and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of *sale, transportation,* distribution, apportionment or storage

As Finally Passed.
(See page 97 hereof)

That the President of the United States shall be, and he is hereby authorized and empowered, whenever and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of *production, sale, shipment,* distribution, apportionment or storage

thereof among merchants and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission, during the war *and for a period of one year thereafter*, or for such part of said time as in his judgment may be necessary.

That if, in the opinion of the President, any such producer or dealer fails to neglect or conform to such prices or regulations, or to conduct his business efficiently under the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition

thereof among dealers and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission, during the war

or for such part of said time as in his judgment may be necessary.

That if, in the opinion of the President, any such producer or dealer fails or neglect to conform to such prices or regulations, or to conduct his business efficiently under the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition

and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such agency as he may direct during the period of the war *and one year thereafter*, or for such part of said time as in his judgment may be necessary.

That if the prices so fixed or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer, the compensation *or damages fixed* be not satisfactory to the person or persons entitled to the same, such person *or persons* shall be paid

and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such agency as he may direct during the period of the war or for such part of said time as in his judgment may be necessary.

That if the prices so fixed or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer, the compensation *therefor as determined by the provisions of this Act* be not satisfactory to the person or persons entitled to *receive* the same, such person shall be paid *seventy-five per cent-*

the amount prescribed by the President, and shall be entitled to sue the United States to recover such *other* sum as, added to *the amount so paid,*

will be just compensation in the manner provided by Section 24, paragraph 20, and Section 145 of the Judicial Code.

That any producer or dealer whose plant, business and appurtenances shall have been requisitioned or taken over by the President shall be paid a *fair and reasonable* compensation for the use thereof *or for damages incurred thereby* during the period that the same may be requisitioned or taken over as aforesaid, which compensation *and damages* the President shall fix or cause to be fixed by the Federal Trade Commission, *or such other agent or agencies as he may designate.*

um of the amount so determined and shall be entitled to sue the United States to recover such *further* sum, as added to *said seventy-five per centum, will make up such amount as* will be just compensation in the manner provided by Section 24, paragraph 20, and Section 145 of the Judicial Code.

That any producer or dealer whose plant, business and appurtenances shall have been requisitioned or taken over by the President shall be paid a *just* compensation for the use thereof

during the period that the same may be requisitioned or taken over as aforesaid, which compensation

the President shall fix or cause to be fixed by the Federal Trade Commission.

Appellant's Construction of the Statute is not only the Most Logical Construction Suggested, but is also the Fairest and the Most Reasonable.

It is argued by the Government (p. 14 of the brief) that:

> "The construction urged by appellant that, in complete ignorance of the enormous liabilities to be fastened on the taxpayer, and contrary to all precedent, Congress, by force of an obscure implication hidden in paragraph 4, intended to involve the government in suits to recover lost profits by every coal producer and dealer in the United States who operated under Federal regulation whether his plant was or was not requisitioned, is wholly unreasonable."

In other words, the argument is advanced that it is unthinkable that Congress could have intended to recompense every producer for whom the prices fixed were too low. But is not this precisely what was provided in paragraphs 6 and 8 of this same Sec. 25, which contemplated that the United States would as a sort of Sales Agent take over all the coal in the United States at a fixed price and then resell it to the public and guarantee the producer that if the price fixed was not proper compensation, the United States would make up the difference out of the taxpayers' money? And is not this precisely what

was contemplated by Senator Pomerene's amendment as it passed the Senate? And is it not precisely what was done by the United States in connection with the Railroads and Telephone Companies during war time? Under control of the United States the Railroads sold transportation to the public at a price fixed by the United States and the United States then paid the owners of the Railroads the difference between the net receipts from the rates so fixed and a reasonable return upon the investment of the owners.

Then why is it "wholly unreasonable" to suppose that Congress intended to do the very same thing with coal?

On the contrary, if we consider merely what Congress probably intended to do, there is every indication that it intended to do just what we contend was done.

As we see it, there are only two ways in which Congress could constitutionally regulate rates or prices. One is merely to fix or authorize the fixing of rates, and the other is to fix or authorize the fixing of rates with a Government guaranty against loss if the rates are fixed too low.

The first method is that customarily employed in times of peace, and the Railroad rates are the best example of it. If the rates fixed by the I. C. C. are so low as to be confiscatory the

accepted remedy of the carrier is to secure an injunction from the Court to restrain the enforcement of such rates. The result of such a proceeding is to prevent the enforcement of the rate until the question is settled, and finally the rate will be raised above the confiscatory level.

The fixing of rates without any guaranty would of necessity mean that injunctions could have been obtained against the enforcement of any rates which were confiscatory. The war power of Congress, broad as it is, is limited by the Fifth Amendment, and Congress could not, even in time of war, compel the enforcement of a price or rate which would amount to confiscation. Hamilton v Kentucky Distilleries Co. 251 U. S. 146, 156.

The other method, where rates are fixed coupled with a guaranty, eliminates the possibility of and the necessity for an injunction if the rates are fixed too low. The guaranty would be inserted for the express purpose of insuring that the rates fixed would be enforced and of preventing any possibility of disturbance of the rates by injunction.

In time of peace the first method would obviously be the better one, because as a rule there is no pressing necessity for immediate enforcement of the rates.

But in time of war the whole situation is changed. The orders of the Government must be obeyed.

There is no time for discussions and injunctions over confiscation. The purpose of the fixing of the rates is to help win the war and if the enforcement of these rates is to await final determination by the Court of last resort on the question of confiscation, the war may be over and lost before then.

The thing to do was to say to such persons as this claimant, "Do not argue now about these prices. Mine all the coal you possibly can. We must have it. If after all is over you are out of pocket, we will make good your loss to you and will distribute it over the entire country."

Would this be a "wholly unreasonable" thing for Congress to do?

Relying on this guaranty the present claimant proceeded to mine coal to the extent of its ability and at the end of the seventeen months of price fixing found that the receipts from the prices fixed had not been sufficient to pay for the actual cost of getting it out of the ground.

Then when it brings this suit upon the guaranty, the Government says in its brief, "Why did you not get an injunction against Dr. Garfield if the prices he fixed for your coal were too low?" The answer is of course that no injunction could have been obtained because the guaranty was given by Congress for the express purpose of making

it unnecessary and impossible to secure an injunction.

Summary

Our position may be summarized as follows:

First: It is entirely reasonable to suppose that Congress would have intended to prevent interference with a war time regulation of prices by making a guaranty to those for whom the prices fixed were not fair.

Second: (a) From the wording of the 4th paragraph of Sec. 25 of the Lever Act it is plain that some remedy was intended to be given to the seller on sales made other than to the United States because:

(i) The words "prices so fixed" in paragraph 4 refer to the precedent authority in paragraph 1 to fix prices on sales other than to the United States, and

(ii) These words cannot refer to the fixing of prices on sales to United States authorized in the subsequent paragraph 6 because the remedy for the abuse of the authority in paragraph 6 is fully and completely covered by the subsequent paragraph 8 which refers explicitly to paragraph 6.

(b) Since some remedy was intended to be given the seller on sales between producer and consumer, and since it would be absurd to suppose that Congress intended to make up the difference

between 75% of the price fixed and a reasonable price, the only possible conclusion is that the producer was to receive the whole of the price from his purchaser, and have a right to sue the United States for the difference between that and a reasonable price.

Third: An examination of this provision as it passed the Senate shows conclusively that such a right was then given, and the report of the Conference Committee shows that the only change intended to be made by the Committee in this provision concerned sales to the United States and that no change was contemplated as applied to sales from producer to consumer.

Fourth: The wording is obscure as it stands, and cannot be made entirely clear without either eliminating or inserting certain words. The construction for which we contend does less violence to the structure of the paragraph, and is more consistent with the other portions of the section and with the general intent of Congress than any other possible construction.

During the war the Government, being all the people of the United States, required that every citizen enlist all his resources for the prosecution of the war.

By the war legislation Congress aimed to place the burden of the war not only on the comparatively few who controlled the facilities most necessary

for its operation, but equitably among all who profited by its successful termination.

Now that the war has been won, it is incumbent on the Courts to construe this war legislation in accordance with its purpose and spirit, to distribute the war burden equitably over the entire country, and, so far as the language of Congress will permit, to insure that any citizen who, relying on a guaranty of Congress that he would receive just compensation, has whole-heartedly employed all his resources in an essential industry, shall not suffer an unjust and uncompensated loss merely because, in the hurry of the amendment of necesary legislation, Congress did not express its clear and obvious intention in unambiguous language.

It is respectfully submitted that the judgment of the Court of Claims should be reversed and the demurrer of the United States to Claimant's petition should be overruled.

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APPENDIX A.

TEXT OF THE LEVER ACT AS IT WENT TO THE CONFERENCE COMMITTEE.

(This appendix shows the text of the bill in the form in which it originally passed the House, together with the amendments thereto adopted by the Senate. In the form here shown the bill went to the Conference Committee. Erased provisions were stricken out in the Senate prior to submission to the Conference Committee; italicized provisions were inserted in the Senate.)

65th Congress. 1st Session.

H. R. 4961.

IN THE HOUSE OF REPRESENTATIVES.
July 23, 1917.

Ordered to be printed with the amendments of the Senate numbered.

AN ACT

To provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

(1) ~~That, by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement, of foods, feeds, fuel, and articles required for their production, hereafter in this Act called necessaries; to prevent, locally~~

~~or generally, scarcity, monopolization, hoarding, injurious speculation, manipulations, and private controls, affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessaries during the war. For such purposes the instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions hereinafter set forth are created, established, conferred, and prescribed.~~

That, by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement, of foods, feeds, and fuel, including kerosene and gasoline, hereafter in this Act called necessaries; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, or manipulations, affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessaries during the war. The President is authorized to make such regulations and to issue such orders as he may deem advisable to carry out the provisions of this Act. He is further authorized and directed to appoint, by and with the advice and consent of the Senate, three commissioners, at an annual salary of $7,500 each, payable monthly, who shall constitute a Board of Food Administration, and who shall perform such duties in carrying out the purposes of this Act as the President shall direct. One of said commissioners shall be a farmer actually engaged at the time of his appointment in the cultivation of the soil. The President shall designate the chairman of said board. Said commissioners shall hold office at the pleasure of the President during the continuance of the war.

(2) ~~Sec. 2. That words used in this Act shall be construed to import the plural or the singular, as the~~

~~case demands. The word "person," wherever used in this Act, shall include individuals, partnerships, associations, and corporations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any partnership, association, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such partnership, association, or corporation as well as that of the person.~~

SEC. (3) ~~3~~ *2.* That (4) ~~there is hereby established a governmental control of necessaries which shall extend to and include all the processes, methods, instrumentalities and activities of and for the production, manufacture, procurement, storage, distribution, sale, marketing, pledging, financing, and consumption of necessaries, which shall be exercised and administered by the President for the purposes of this Act as hereinafter provided; and all such necessaries, processes, methods, and activities are hereby declared to be Affected with a public interest. And~~ in carrying out the purposes of this (5) ~~section~~ *Act* the President is authorized to enter into any voluntary arrangements or agreements, to (6) *create and* use any agency or agencies, to accept (7), *in his discretion,* the services of any person without compensation, to cooperate with any agency or person, to utilize any department or agency of the Government, and to coordinate their activities so as to avoid any preventable loss or duplication of effort or funds.

(8) SEC. *3. That no person acting either as a voluntary or paid agent or employee of the United States in any capacity, including an advisory capacity, shall solicit, induce, or attempt to induce any person or officer authorized to execute or to direct the execution of contracts on behalf of the United States to make any contract or give any order for the furnishing to the United States of work, labor, or services, or of materials, supplies, or other property of any kind or character, if such*

agent or employee has any pecuniary interest in such contract or order, or if he or any firm of which he is a member, or corporation, joint-stock company, or association of which he is an officer or stockholder, or in the pecuniary profits of which he is directly or indirectly interested, shall be a party thereto. Nor shall any agent or employee make, or permit any committee or other body of which he is a member to make, or participate in making, any recommendation concerning such contract or order to any council, board, or commission of the United States, or any member or subordinate thereof, without making to the best of his knowledge and belief a full and complete disclosure in writing to such council, board, commission, or subordinate of any and every pecuniary interest which he may have in such contract or order and of his interest in any firm, corporation, company, or association being a party thereto. Nor shall he participate in the awarding of such contract or giving such order. Any willfull violation of any of the provisions of this section shall be punishable by a fine of not more than $10,000, or by imprisonment of not more than five years, or both: Provided, That the provisions of this section shall not change, alter or repeal section forty-one of Thirty-fifth Statutes at Large.

SEC. 4. That it is hereby made unlawful for any person willfully to destroy any necessaries for the purpose of enhancing the price or restricting the supply thereof; knowingly to commit waste or willfully to permit preventable deterioration of any necessaries in or in connection with their production, manufacture, or distribution; to hoard, as defined in section six of this Act, any necessaries; to monopolize or attempt to monopolize either locally or generally, any necessaries; to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge, in handling or dealing in or with any necessaries; to conspire, combine, agree,

or arrange with any other person, (a) to limit the facilities for transporting, producing, (9) *harvesting*, manufacturing, supplying, storing, or dealing in any necessaries; (b) to restrict the supply of any necessaries; (c) to restrict distribution of any necessaries; (d) (10) *willfully* to prevent, limit, or lessen the manufacture or production of any (11) ~~necessaries,~~ or *necessaries in order* to enhance the price thereof, or (e) to exact excessive prices for any necessaries (12); ~~or to aid or abet the doing of any act made unlawful by this section.~~ *Any person who violates any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding $10,000, or by imprisonment not exceeding two years, or both.*

(13) ~~SEC. 5. That, from time to time, whenever the President shall find it essential to license the importation, exportation, manufacture, storage, mining, or distribution of any necessaries, in order to carry into effect any of the purposes of this Act, and shall publicly so announce, no person shall, after a date fixed in the announcement, engage in or carry on any such business specified in the announcement of importation, exportation, manufacture, storage, mining or distribution of any necessaries as set forth in such announcement, unless he shall secure and hold a license issued pursuant to this section. The President is authorized to issue such licenses and to prescribe regulations for the issuance of licenses and requirements for systems of accounts and auditing of accounts to be kept by licensees, submission of reports by them, with or without oath or affirmation, and the entry and inspection by the President's duly authorized agents of the places of business of licenses. Whenever the President shall find that any rate, charge, or practice of any licensee is unjust, or unreasonable, or discriminatory and unfair, or wasteful, and shall order such licensee, within a reasonable time fixed in the order to discontinue any such unjust, unreasonable, discriminatory and unfair,~~

~~or wasteful rate, charge, or practice, thereafter, unless such order is revoked or suspended, such licensee shall, within the time prescribed in the order, discontinue such unjust, unreasonable, discriminatory and unfair, or wasteful rate, charge, or practice. The President may, in lieu of any such unjust, unreasonable, discriminatory and unfair, or wasteful rate, charge, or practice, find what is a just, reasonable, nondiscriminatory and fair, or economical rate, charge, or practice; and in any suit in any Federal or State court of competent jurisdiction such finding of the President shall be prima facie evidence. Any person, who, without a license issued pursuant to this section, knowingly engages in or carriers on any business for which a license is required under this section, and any licensee who willfully fails or refuses to discontinue any unjust, unreasonable, discriminatory and unfair, or wasteful rate, charge, or practice, in accordance with the requirement of an order issued under this section, or willfully violates any provision of this section or any regulation prescribed under this section shall, upon conviction thereof, be punished by a fine not exceeding $5,000 or by imprisonment for not more than two years, or both: *Provided*, That this section shall not apply to any farmer, gardener, or other person with respect to the products of any farm, garden, or other land owned, leased, or cultivated by him, nor to any retailer with respect to the retail business actually conducted by him, nor to any common carrier, nor shall anything in this section be construed to authorize the fixing or imposition of a duty or tax upon any article imported into or exported from the United States or any State, Territory, or the District of Columbia: *Provided*, That for the purpose of this Act a retailer shall be deemed to be a person, copartnership, firm, corporation, or association not engaging in the wholesale business whose gross sales do not exceed $100,000 per annum.~~

SEC. 5. *That the president is authorized, whenever in his judgment the national security and defense will be thereby subserved, to require the following persons to take out licenses in such form and under such rules and regulations as he may prescribe, to wit: First, any person operating an elevator or other storage facility used for the storing of wheat which constitutes a part of interstate or foreign commerce; second, any person operating a cold-storage establishment for the storage of meat, poultry, eggs, or dairy products constituting a part of interstate or foreign commerce; third, any person operating a packing house producing meat or meat products which enter into interstate or foreign commerce; fourth, any person operating a factory which produces farm implements or machinery which enter into interstate or foreign commerce; fifth, any person operating a coal mine producing coal, and any person dealing in coal, which enters into interstate or foreign commerce; sixth, any person engaged in producing, storing, or handling fertilizer or fertilizer ingredients which enter into interstate or foreign commerce; seventh, any person, not a retailer as defined in this section, who shall engage in handling any of the foregoing enumerated products. Whenever the President shall give notice that the foregoing persons, or any of them, shall be required to take out a license as herein provided, it shall be unlawful for any person to engage in any such business without having obtained said license and conforming to the rules and regulations prescribed in connection therewith. Whenever the President shall have given said notice it shall be unlawful for any carrier to receive for transportation any of the foregoing enumerated products from any person who shall not have obtained the license herein authorized and provided for. Whenever the President shall find that any storage charge, commission, profit, or practice of any licensee is unjust, or unreasonable, or discriminatory and unfair, or wasteful, and shall order*

such licensee, within a reasonable time fixed in the order to discontinue the same, unless such order, which shall recite the facts found, is revoked or suspended, such licensee shall, within the time prescribed in the order, discontinue such unjust, unreasonable, discriminatory, and unfair storage charge, commission, profit, or practice. The President may, in lieu of any such unjust, unreasonable, discriminatory and unfair storage charge, commission, profit, or practice, find what is a just, reasonable, nondiscriminatory, and fair storage charge, commission, profit, or practice, and in any proceeding brought in any court such order of the President shall be prima facie evidence. Any person who, without a license issued pursuant to this section, knowingly engages in or carries on any business for which a license is required under this section, or willfully fails or refuses to discontinue any unjust, unreasonable, discriminatory, and unfair storage charge, commission, profit or practice, in accordance with the requirement of an order issued under this section, or any regulation prescribed under this section or the officer or agent of any carrier who shall knowingly receive for transportation any such product from any person so required to take out such license but who shall have failed or refused to do so, or whose license shall have been revoked, shall, upon conviction thereof, be punished by a fine not exceeding $5,000 or by imprisonment for not more than two years, or both: Provided, That this section shall not apply to any farmer, gardener, cooperative association of farmers or gardeners, including livestock farmers, or other prsons with respect to the products of any farm, garden, or other land owned, leased, or cultivated by him, nor to any retailer with respect to the retail business actually conducted by him, nor shall anything in this section be construed to authorize the fixing or imposition of a duty or tax upon any article imported into or exported from the United States, or any State, Territory, or the District of Co-

lumber: Provided further, That for the purposes of this Act a retailer shall be deemed to be a person, copartnership, firm, corporation, or association not engaging in the wholesale business whose gross sales do not exceed $100,000 per annum.

SEC. 6. That (14) ~~any person who willfully hoards any necessaries shall upon conviction thereof be fined not exceeding $5,000 or be imprisoned for not more than two years, or both. Necessaries~~ *necessaries* shall be deemed to be hoarded within the meaning of this Act when either (15) ~~(a) held, contracted for, or arranged for by any person in a quantity in excess of his reasonable requirements for use or consumption by himself and dependents for a reasonable time;~~ (~~b~~ a) held, contracted for, or arranged for by any manufacturer, wholesaler, retailer, or other dealer in a quantity in excess of the reasonable requirements of his business for use or sale by him for a reasonable time, or reasonably required to furnish necessaries produced in surplus quantities (16) ~~seasonably~~ *seasonably* throughout the period of scant or no production; or (17) (~~c~~ b) withheld, whether by possession or under any contract or arrangement, from the market by any person for the purpose of unreasonably increasing or diminishing the price: *Provided, however,* That any accumulating or withholding by any (18) ~~farmer,~~ *farmer or* gardener, (19) *cooperative association of farmers or gardeners, including live-stock farmers,* or any other person, of the products of any farm, garden, or other land owned, leased, cultivated by him shall not be deemed to be hoarding within the meaning of this Act.

SEC. 7. That whenever any necessaries shall be hoarded as defined in section six they shall be liable to be proceeded against in any district court of the United States within the district where the same are found and seized by a process of libel for condemnation, and if such necessaries shall be adjudged to be hoarded they shall be disposed of by sale in such manner

as to provide the most equitable distribution thereof as the court may direct, and the proceeds thereof, less the legal costs and charges, shall be paid to the party entitled thereto. The proceedings (20) ~~of~~ *in* such libel cases shall conform as (21) ~~near~~ *nearly* as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. It shall be the duty of the United States attorney for the proper district to institute and prosecute any such action upon presentation to him of satisfactory evidence to sustain the same.

(22) ~~SEC. 8. That any person who willfully destroys any necessaries for the purpose of enhancing the price or restricting the supply thereof shall, upon conviction thereof be fined not exceeding $5,000 or imprisoned for not more than two years, or both.~~

(23) ~~SEC. 9. That any person who conspires, combines, agrees, or arranges with any other person (a) to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any necessaries; (b) to restrict the supply of any necessaries; (c) to restrict the distribution of any necessaries; (d) to prevent, limit, or lessen the manufacture or production of any necessaries; or (e) to enhance the price of any necessaries shall, upon conviction thereof, be fined not exceeding $10,000 or be imprisoned for not more than two years, or both.~~

(24) ~~SEC. 10. That to carry into effect the purposes of this Act the President is authorized to purchase and provide for the production or manufacture of necessaries; to store them and to provide storage facilities for them by construction, purchase, lease, or otherwise; to sell them to any citizen of the United States or to any Government engaged in war with any country with which the Government of the United States is or may be at war; and to require any person having the control of any necessaries, or any storage~~

~~space suitable for the storing of necessaries, to furnish the whole or any part of such necessaries or storage space to the Government in such quantities, at such times and at such prices as shall be determined by the President to be reasonable. Upon failure of the person to comply with such requirement, the President is authorized to requisition and take possession of any such necessaries or storage space, and to pay for them at the price so determined.~~

SEC. 8. *That the President is authorized from time to time,* (a) *to requisition foods, feeds, fuels, and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition storage facilities for such supplies; and he shall ascertain and pay a just compensation therefor.* If the (25) ~~price~~ *compensation* so determined be not satisfactory to the person entitled to receive the same, such person shall be paid (26) *seventy-five per centum* of the amount (27) ~~prescribed~~ *so determined* by the President, and shall be entitled to sue the United States to recover such further sum as added to (28) ~~the amount so paid~~, *said seventy-five per centum* will (29) *make up such amount as will* be just compensation (30) ~~for such necessaries or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies~~ *therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code: Provided,* That nothing in this section (31), *or in the section that follows,* shall be construed to require any natural person to furnish to the Government any necessaries held by him and reasonably required for consumption or use by himself and dependents (32) ~~for a reasonable time. Any moneys received by the United States from or in connection with the disposal by the United States of necessaries under this section may, in the discretion of the President, be used as a revolving fund for~~

~~further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts~~, *nor shall any person, firm, corporation, or association be required to furnish to the Government any seed necessary for the seeding of land owned, leased, or cultivated by them.*

(33) SEC. *9. That the President is authorized from time to time in order to guarantee reasonable prices to the producer and to the consumer, to purchase, to store, to provide storage facilities for, and to sell for cash at reasonable prices, fuel, wheat, flour, meal, beans, and potatoes: Provided, That if any minimum price shall have been theretofore fixed, pursuant to the provisions of section twelve of this Act, then the price paid for any foods, feeds or fuel so purchased shall not be less than such minimum price. Any moneys received by the United States from or in connection with the disposal by the United States of necessaries under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts.*

SEC. (34) ~~11~~ *10.* That whenever the President shall find (35) ~~that it is impossible by license or by voluntary arrangement or agreement to assure an adequate and continuous supply of necessaries~~, *it necessary to secure an adequate supply of necessaries for the support of the Army or the maintenance of the Navy, or for any other public use connected with the common defense,* he is authorized to requisition and take over, for use or operation by the Government, any factory, (36) *packing house,* mine, or other plant, or any part thereof, in (37) *or through* which any necessaries are or may be manufactured, produced, prepared, or mined (38), *and to operate the same.* Whenever the President shall determine that the further use or operation by the Government of any such factory, mine, or plant, or part

thereof, is not essential for the national security or defense, the same shall be restored to the person entitled to the possession thereof. The United States shall make just compensation, to be determined by the President, for the taking over, use, occupation, and operation by the Government of any such factory, mine, or plant or part thereof. If the (39) ~~amount~~ *compensation* so determined be unsatisfactory to the person entitled to receive the same, such person shall be paid (40) *seventy-five per centum of* the amount (41) ~~prescribed~~ *so determined* by the President, and shall be entitled to sue the United States to recover such further sum as, added to (42) ~~the amount paid~~ *said seventy-five per centum,* will (43) *make up such amount as will* be just compensation, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. The President is authorized to prescribe such regulations as he may deem essential for carrying out the purposes of this section, including (44) ~~the operation of any such factory, mine, or plant, or part thereof~~, the purchase, sale, or other disposition of articles used, manufactured, produced, prepared, or mined therein, and the employment, control, and compensation of employees (45): *Provided, that whenever any person or persons entitled to receive such wages are dissatisfied with the rate of wages so fixed by the President, he or they shall have the right to have the reasonableness of such wages reviewed and determined by the Board of Mediation and Conciliation created by the Act approved July fifteenth, nine hundred and thirteen; and in case said board shall conclude that a higher rate of wages shall be allowed their finding shall be conclusive in the premises, and said board shall prescribe rules and regulations for carrying this proviso into effect.* Any moneys received by the United States from or in connection with the use or operation of any such factory, mine, or plant, or part thereof, may, in the discretion of the President, be used as a revolving fund for the pur-

pose of the continued use or operation of any such factory, mine, or plant, or part thereof, and the accounts of each such factory, mine, plant, or part thereof, shall be kept separate and distinct. Any balance of such moneys not used as part of such revolving fund shall be paid into the Treasury as miscellaneous receipts. (46) *The word "mine" as used in this section shall be held to include oil and gas wells and oil and gas pipe lines.*

SEC. (47) 12 *11.* That (48) ~~undue enhancement or fluctuation of prices of, or injurious speculation in, or unjust market manipulation or unfair and misleading market quotations of the prices of necessaries, are hereby prohibited, and~~ whenever the President finds it essential in order to prevent undue enhancement, depression, or fluctuation of prices of, or in order to prevent injurious speculation in or in order to prevent unjust market manipulation or unfair and misleading market quotations of the prices of necessaries, hereafter in this section called evil practices, he is authorized to prescribe such regulations governing, or may either wholly or partly prohibit, operations, practices, and transactions at, on, in, or under the rules of any exchange, board of trade, or similar institution or place of business as he may find essential in order to prevent, correct, or remove such evil practices. (49) ~~Further, for the purposes of this section, the President~~ *Such regulations* may require all persons coming within (50) ~~its~~ *their* provisions to keep such records and statements of account, and may require such persons to make such returns, verified under oath or otherwise, as will fully and correctly disclose all transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, including the making, execution, settlement, and fulfillment thereof. He may also require all persons acting in the capacity of a clearing house, clearing association,

or similar institution, for the purpose of clearing, settling, or adjusting transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions (51), ~~and he may appoint agents to conduct the investigations necessary to enforce the provisions of this section and all rules and regulations made by him in pursuance thereof, and may fix and pay the compensation of such agents.~~ Any person who willfully violates any regulation made pursuant to this section, or who knowingly engages in any operation, practice, or transaction prohibited pursuant to this section, (52) ~~or who willfully aids or abets any such violation or any such prohibited operation, practice, or transaction,~~ shall, upon conviction thereof, be punished by a fine not exceeding $10,000 or by imprisonment for not more than four years, or both.

(53) *That any building or room occupied or used by a board of trade, chamber of commerce, grain exchange, or otherwise, in which wheat or other food cereals are bought or sold for present or future delivery shall, for the purpose of this Act, be known as a grain exchange.*

All persons engaged in buying or selling in interstate or foreign commerce, for present or future delivery, any wheat or other food cereal, in or about any such grain exchange, shall be known and designated as traders in grain.

All sales of wheat or other food cereals by such traders in such exchanges for future delivery, and not for present or immediate delivery, shall be known and designated as dealings in futures.

If at any time during the pendency of the existing war between the United States and the German Empire the President of the United States shall find that such dealings in futures, in or about any grain exchange, unduly or unreasonably raise or enhance the price of wheat

or other food cereals, to the injury of the people of the United States, he may at once request the traders in such exchange to discontinue for a time specified by him all dealings in futures. In case such request of the President is not promptly complied with, then he is hereby empowered to order such dealings in futures, as last aforesaid, to be entirely suspended and discontinued for such limited time as he may direct, and if such order is not promptly complied with he may by proclamation declare such exchange closed, and thereafter it shall be unlawful to utilize or permit to be utilized such building or room as a grain exchange or for any person, being a trader in grain on such exchange, to engage in the business theretofore conducted on or at such closed exchange.

Any person violating any of the provisions of this Act shall be punished by a fine of not less than $500 or by imprisonment for not more than one year, or by both such fine and imprisonment.

(54) ~~SEC. 13. That, whenever the President shall find that an emergency exists requiring stimulation of production and that it is essential that the producers of any nonperishable agricultural food or food products produced within the United States shall have the benefits of the guarantee provided for in this section in order to stimulate production of such products, he is authorized, from time to time, seasonably and as far in advance of seeding time as practicable, to determine and fix and to give public notice of what, under specified conditions, is a reasonable guaranteed price for any such products, in order to assure such producers a reasonable profit. Thereupon, the Government of the United States hereby guarantees every producer of any merchantable nonperishable agricultural food or feed products produced within the United States, for which a guaranteed price shall be fixed by notice in accordance with this section, that, upon compliance by him with the regulations prescribed by the President, he will receive for any such products produced in~~

reliance upon this guarantee within the period, not exceeding eighteen months, prescribed in the notice, a price not less than the guaranteed price therefor as fixed pursuant to this section. In such regulations the President shall prescribe the terms and conditions upon which any such producer shall be entitled to the benefits of such guaranty. When the President finds that the importation into the United States of any such product produced outside of the United States seriously interferes or is likely seriously to interfere with the practical operation of any guaranteed price therefor fixed pursuant to this section, or materially enhances or is likely materially to enhance the liabilities of the United States under guaranties of prices therefor made pursuant to this section, and ascertains what rate of duty, added to the then existing rate of duty on any such product and to the value of such product at the time of importation, would be sufficient to bring the price thereof at which imported up to the price fixed therefor pursuant to the foregoing provisions of this section, he shall proclaim such facts, and thereafter there shall be levied, collected, and paid upon such product when imported, in addition to the then existing rate of duty, the rate of duty so ascertained; but in no case shall any such rate of duty be fixed at an amount which will effect a reduction of the rate of duty upon any such products under any then existing tariff law of the United States. For the purpose of making any guaranteed price effective under this section, or whenever he deems it essential in order to protect the Government of the United States against material enhancement of its liabilities arising out of any guaranty under this section, the President is authorized also, in his discretion, to purchase any such products for which a guaranteed price shall be fixed under this section, and to hold, transport, or store them, or to sell, dispose of, and deliver the same to any citizen of the United States or to any government engaged in war with any country

~~with which the Government of the United States is or may be at war or to use the same as supplies for any department or agency of the Government of the United States. Any moneys received by the United States from or in connection with the sale or disposal of any products under this section, may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts.~~

SEC. *12. That whenever the President shall find that an emergency exists requiring stimulation of the production of wheat and that it is essential that the producers of wheat, produced within the United States, shall have the benefits of the guaranty provided for in this section, he is authorized, from time to time, seasonably and as far in advance of seeding time as practicable, to require the Board of Food Administration to determine and fix and to give public notice of what, under specified conditions, is a reasonable guaranteed price for wheat, in order to assure such producers a reasonable profit. Said board shall thereupon fix such guaranteed price for each of the official grain standards for wheat as established under the United States grain standards Act, approved August eleventh, nineteen hundred and sixteen. It shall from time to time establish and promulgate such regulations as it shall deem wise in connection with such guaranteed prices, and in particular governing conditions of delivery and payment, and differences in price for the several standard grades in the principal primary markets of the United States, adopting number one northern or its equivalent at the principal interior primary markets as the basis. Thereupon, the Government of the United States hereby guarantees every producer of wheat produced within the United States, that, upon compliance by him with the regulations prescribed, he shall receive for any wheat produced in reliance upon*

this guarantee within the period, not exceeding eighteen months, prescribed in the notice, a price not less than the guaranteed price therefore as fixed pursuant to this section. In such regulations the Board of Food Administration, subject to the approval of the President, shall prescribe the terms and conditions upon which any such producer shall be entitled to the benefits of such guaranty. The guarantee prices for the several standard grades of wheat from the passage of this Act to the first day of July, nineteen hundred and nineteen, shall be based upon number one northern or its equivalent at not less than $2 per bushel at the principal interior primary market. This guaranty shall not be dependent upon the action of the President or said board under the first part of this section, but is hereby made absolute. When the President finds that the importation into the United States of any wheat produced outside of the United States materially enhances or is likely materially to enhance the liabilities of the United States under guaranties of prices therefor made pursuant to this section, and ascertains what rate of duty, added to the then existing rate of duty on wheat and to the value of wheat at the time of importation, would be sufficient to bring the price thereof at which imported up to the price fixed therefor pursuant to the foregoing provisions of this section he shall proclaim such facts, and thereafter there shall be levied, collected, and paid upon wheat when imported, in addition to the then existing rate of duty, the rate of duty so ascertained; but in no case shall any such rate of duty be fixed at an amount which will effect a reduction of the rate of duty upon wheat under any then existing tariff law of the United States. For the purpose of making any guaranteed price effective under this section, or whenever he deems it essential in order to protect the Government of the United States against material enhancement of its liabilities arising out of any guaranty under this section, the President is author-

ized also, in his discretion, to purchase any wheat for which a guaranteed price shall be fixed under this section, and to hold, transport, or store it, or to sell, dispose of, and deliver the same to any citizen of the United States or to any Government engaged in war with any country with which the Government of the United States is or may be at war or to use the same as supplies for any department or agency of the Government of the United States. Any moneys received by the United States from or in connection with the sale or disposal of wheat under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts.

(55) ~~SEC. 14. That no person shall use any foods, food materials, or feeds in the production of alcohol, except for governmental, industrial, scientific, medicinal, or sacramental purposes, or of alcoholic beverages. Any person who willfully violates this section shall, upon conviction thereof, be punished by a fine not exceeding $5,000, or by imprisonment for not more than two years, or both.~~

SEC. *13. That from and after thirty days from the date of the approval of this Act no person shall use any foods, fruits, food materials, or feeds in the production of distilled liquors, except for governmental, industrial, manufacturing, scientific, or medicinal purposes. Nor shall there be imported into the United States during said war any distilled liquors. Any person who wilfully violates this section shall, upon conviction thereof, be punished by a fine of not exceeding $5,000, or by imprisonment for not more than two years, or both: Provided, That the President of the United States be, and hereby is, directed to take over for and on behalf of the Government of the United States all distilled liquors that are held in bond at the time this Act goes*

into effect, and he is hereby authorized to pay to the owners of such liquors the actual cost of the same plus a profit not exceeding ten per centum; Provided further, That the collection of all excise taxes on distilled spirits in bond at the time of the passage of this Act shall be suspended so long as this Act is in force, and the distiller, in event that said distilled spirits shall be taken over by the Government, as herein provided, shall be discharged from all obligation for any and all taxes levied and assessed against said distilled spirits: And provided further, That the owner of the distilled spirits shall not withdraw any part thereof without the payment of the excise tax in force.

(56) ~~SEC. 14a. That the President is authorized, if, in his opinion, it is necessary to conserve necessaries, to require any person having control of alcohol and distilled spirits, to turn over to the Government for use of redistillation, such proportion of said alcohol or spirits as the President may deem necessary to meet the requirements of the Government in the manufacture of munitions and other military and hospital supplies in so far as such use or redistillation would dispense with the necessity of utilizing products and materials suitable for food and feeds in the future manufacture of alcohol or distilled spirits for the purposes herein enumerated. Upon the failure of the person to comply with the President's requirement, the President is authorized to requisition and take possession of the alcohol and distilled spirits required to be turned over and to pay for same a just compensation to be determined by the President. And if the price so determined be not satisfactory to the person entitled to receive the same, such person shall be paid the amount prescribed by the President and shall be entitled to sue the United States to recover such further sum as, added to the amount so paid, will be just compensation for such spirits or alcohol, in the manner provided by section twenty four~~,

~~paragraph twenty, and section one hundred and forty five of the Judicial Code.~~

(57) ~~SEC. 15. That in carrying out the purposes of this Act, the President is authorized to create an agency or agencies, to accept the services of any person without compensation to cooperate with any agency or person, to utilize any department or agency of the Government, and to coordinate their activities so as to avoid any preventable loss of funds or duplication of work.~~

(58) SEC. *14. That the President is authorized and directed to commandeer any or all distilled spirits in bond at the date of the approval of this Act for redistillation, in so far as such redistillation may be necessary to meet the requirements of the Government in the manufacture of munitions and other military and hospital supplies, or in so far as such redistillation would dispense with the necessity of utilizing products and materials suitable for foods and feeds in the future manufacture of distilled spirits for the purposes herein enumerated. The President shall determine and pay a just compensation for the distilled spirits so commandeered; and if the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation for such spirits, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.*

(59) ~~SEC. 16. That the President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this Act.~~

SEC. (60) ~~17~~ *15.* That every person who willfully assaults, resists, impedes, or interferes with any officer, employee, or agent of the United States in the exe-

cution of any duty authorized to be performed by or pursuant to this Act shall upon conviction thereof be fined not exceeding $1,000 or be imprisoned for not more than one year, or both.

(61) ~~SEC. 18. That the sum of $2,500,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available until June thirtieth, nineteen hundred and eighteen, for the payment of such rent, the expense, including postage, of such printing and publications, the purchase of such material and equipment, and the employment of such persons and means, in the City of Washington and elsewhere, as the President may deem essential: Provided, That all persons, excepting persons serving without compensation, shall be appointed in accordance with the provisions of the civil service Act of January sixteenth, eighteen hundred and eighty three.~~

SEC. *16. That the sum of $2,500,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available until June thirtieth, nineteen hundred and eighteen, for the payment of such rent, the expense, including postage, of such printing and publications, the purchase of such material and equipment, and the employment of such persons and means, in the city of Washington and elsewhere, as the President may deem essential; Provided, That all salaries and wages paid under the provisions of this Act shall be the equivalent of salaries and wages paid in other departments of the Government for like services, and in no event shall any salary be paid in excess of $3,500 except as herein specifically provided.*

SEC. (62) ~~19~~ *17.* That for the purposes of this Act the sum of $150,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available during the time this Act is in effect: *'Provided,* That no part of this appropriation shall be expended for the purposes described in the preceding section (63): *Provided further, That item-*

ized statements covering all purchases and disbursements under this and the preceding section shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives on or before the tenth day of each month after the taking effect of this Act, covering the business of the preceding month, and said statements shall be subject to public inspection.

SEC. (64) ~~20~~ *18.* That the employment of any person under the provisions of this Act shall not exempt any such person from military service under the provisions of the selective draft law approved May eighteenth, nineteen hundred and seventeen.

(65) SEC. ~~21~~ *19.* The President shall cause a detailed report to be made to the Congress on the first day of January each year of all proceedings had under this Act during the year preceding. Such report shall, in addition to other matters, contain an account of all persons appointed or employed, the salary or compensation paid or allowed each, the aggregate amount of the different kinds of property purchased or requisitioned, the use and disposition made of such property, and a statement of all receipts, payments, and expenditures, together with a statement showing the general character, and estimated value of all property then on hand, and the aggregate amount and character of all claims against the United States growing out of this Act.

(66) ~~SEC. 22. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered.~~

(67) SEC. *20. That words used in this Act shall be construed to import the plural or the singular, as the case demands. The word "person," wherever used in*

this Act, shall include individuals, partnerships, associations, and corporations.

SEC. (68) ~~23~~ *21.* That the provisions of this Act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President; but the termination of this Act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this Act; but all rights and liabilities under this Act arising before its termination shall continue and may be enforced in the same manner as if the Act had not terminated. Any offense committed and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this Act had not been terminated.

(69) SEC. *22. That it is necessary and proper, in order to execute the powers of Congress to raise and support armies, provide and maintain the Navy, and properly and efficiently provide for the common defense, that the President of the United States shall be, and he is hereby, authorized and empowered, whenever and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of sale, transportation, distribution, apportionment, or storage thereof among merchants and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission, during the war and for a period of one year thereafter, or for such part of said time as in his judgment may be necessary.*

That if, in the opinion of the President, any such

producer or dealer fails or neglects to conform to such prices or regulations, or to conduct his business efficiently under the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such agency as he may direct during the period of the war and one year thereafter, or for such part of said time as in his judgment may be necessary.

While operating or causing to be operated any such plants or business, the President is authorized to prescribe such regulations as he may deem essential for the employment, control, and compensation of the employees necessary to conduct the same: Provided, That whenever any person or persons entitled to receive such wages are dissatisfied with the rate of wages so fixed by the President, he or they shall have the right to have the reasonableness of such wages reviewed and determined by the Board of Mediation and Conciliation created by the Act approved July fifteenth, nineteen hundred and thirteen, and the findings of said board fixing the rate of wages shall be conclusive in the premises, and said board shall prescribe rules and regulations for carrying this proviso into effect.

That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer, the compensation or damages fixed be not satisfactory to the person or persons entitled to the same, such person or persons shall be paid the amount prescribed by the President and shall be entitled to sue the United States to recover such other sum as, added to the amount so paid, will be just compensation in the manner provided by

section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

That any producer or dealer whose plant, business, and appurtenances shall have been requisitioned or taken over by the President shall be paid a fair and reasonable compensation for the use thereof or for damages incurred thereby during the period that the same may be requisitioned or taken over as aforesaid, which compensation and damages the President shall fix or cause to be fixed by the Federal Trade Commission or such other agent or agencies as he may designate.

Or if the President of the United States shall be of the opinion that he can hereby better provide for the common defense, and whenever, in his judgment, it shall be necessary for the efficient prosecution of the war, then he is hereby authorized and empowered to require any or all producers of coal and coke, either in any special area or in any special coal fields, or in the entire United States, to sell their products only to the United States through an agency to be designated by the President, such agency to regulate the resale of such coal and coke, and the prices thereof, and to fix the compensation to be paid such producers by the United States, and to establish rules for the regulation of and to regulate the methods of production, transportation, distribution, apportionment, or storage thereof among merchants and consumers, domestic or foreign, and to make payment of the purchase price thereof to the producers thereof, or to the person or persons legally entitled to said payment.

That within fifteen days after notice from the agencies so designated to any producer of coal and coke that his, or its, output is to be so purchased by the United States as hereinbefore described, such producer shall cease shipments of said product upon his own account and shall transmit to such agency all orders received and unfilled or partially unfilled,

showing the exact extent to which shipments have been made therein, and thereafter all shipments shall be made only on authority of the agency designated by the President, and thereafter no such producer shall sell any of said products except to the United States through such agency, and the said agency alone is hereby authorized and empowered to purchase during the continuance of the requirement the output of such producers.

That the prices to be paid for such products so purchased shall be based upon a fair and just profit over and above the cost of production, including proper maintenance and depletion charges, the reasonableness of such profits and cost of production to be determined by the Federal Trade Commission, and if the prices fixed by the said commission of any such product purchased by the United States as hereinbefore described be unsatisfactory to the person or persons entitled to the same, such person or persons shall have the right to sue the United States in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code, to recover such other sum as added to the amount so fixed will be just compensation. All such products so sold to the United States shall be sold by the United States at such uniform prices, quality considered, as may be practicable and as may be determined by said agency to be just and fair.

Any moneys received by the United States for the sale of any such coal and coke may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any moneys not so used shall be covered into the Treasury as miscellaneous receipts.

That when directed by the President, the Federal Trade Commission is hereby required to proceed immediately with all possible dispatch to make full inquiry giving such notice as it may deem practicable

into the cost of producing under reasonable efficient management at the various places of production the following commodities, to wit: Coal and coke.

The books, correspondence, records, and papers in anyway referring to transactions of any kind relating to the mining, production, sale, or distribution of all mine operators or other persons whose coal and coke have or may become subject to this section, and the books, correspondence, records, and papers of any person applying for the purchase of coal and coke from the United States shall at all time be subject to inspection by the said agency, and such person or persons shall promptly furnish said agency any data or information relating to the business of such person or persons which said agency may call for, and said agency is hereby authorized to procure the information in reference to the business of such coal-mine operators and producers of coke and customers therefore in the manner provided for in sections six and nine of the Act of Congress approved September twenty-sixth, nineteen hundred and fourteen, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and said agency is hereby authorized and empowered to exercise all the powers granted to the Federal Trade Commission by said Act for the carrying out of the purposes of this section.

Having completed its inquiry respecting any commodity in any locality it shall, if the President has decided to fix the prices at which any such commodity shall be sold by producers and dealers generally, fix and publish maximum prices for both producers of and dealers in any such commodity, which maximum prices shall be observed by all producers and dealers until further action thereon is taken by the commission.

In fixing maximum prices for producers the commission shall allow the cost of production, including the expense of operation, maintenance, depreciation,

and depletion, and shall add thereto a just and reasonable profit.

In fixing such prices for dealers, the commission shall allow the cost to the dealer and shall add thereto a just and reasonable sum for his services in the transaction. There shall be but one such dealer between the producer and consumer or user.

The maximum prices so fixed and published shall not be construed as invalidating any contract in which prices are fixed, made in good faith, prior to the establishment and publication of maximum prices by the commission.

Whoever shall, with knowledge that the prices of any such commodity have been so fixed by the commission, ask, demand, or receive a higher price in violation of this section, shall, upon conviction, be punished by a fine of not more than $5,000 or by imprisonment for not more than three years or both. Each independent transaction shall constitute a separate offense.

Nothing in this section shall be construed as restricting or modifying in any manner the right the Government of the United States may have in its own behalf or in behalf of any other Government at war with Germany to purchase, requisition, or take over any such commodities for the equipment, maintenance, or support of armed forces at any price or upon any terms that may be agreed upon or otherwise lawfully determined.

(70) SEC. *23. A joint committee of the Senate and House of Representatives shall be appointed, composed of five members of the Senate, including three Democrats and two Republicans, and five members of the House of Representatives, including three Democrats and two Republicans, to be known as "The Joint Committee on Expenditures in the Conduct of the War."*

It shall be the duty of said committee to keep itself advised with regard to the expenditure of all appropri-

ations bearing on the conduct of the war made by Congress and the contracts relating thereto made by officers of the executive department, and it shall be the duty of the executive departments, on request, to keep said committee fully advised as to such expenditures and contracts.

Such committee shall confer and advise with the President of the United States and the heads of the various executive departments, commissions, voluntary boards or other organizations connected with the conduct of the war, with a view to safeguarding expenditures, and shall report to Congress from time to time in its own discretion, or when requested to do so by either branch of Congress.

The membership of such committee shall be designated by the respective committees of the Senate and House which select the members of the regular standing committees.

Such committee shall have power to act by subcommittee or otherwise, and to send for persons and papers, and administer oaths, to summon and compel the attendance of witnesses and to employ such clerical, expert and stenographic assistance as shall be necessary; and to pay the necessary expenses of such committee there is hereby appropriated out of any money in the Treasury not otherwise appropriated, the sum of $50,000, to be paid out upon the audit and order of the chairman or acting chairman of said committee.

(71) SEC. *24. That any person carrying on or employed in commerce among the several States, or with foreign nations, or with or in the Territories or other possessions of the United States in any article suitable for human food, fuel, or other necessaries of life, who, either in his individual capacity or as an officer, agent, or employee of a corporation or member of a partnership carrying on or employed in such trade, shall store, acquire, or hold, or who shall destroy or make away with any such article for the purpose of limiting the*

supply thereof to the public or affecting the market price thereof in such commerce, whether temporarily or otherwise, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than six months nor more than three years: Provided, That any storing or holding by any farmer, gardener, or other person of the products of any farm, garden, or other land cultivated by him shall not be deemed to be a storing or holding within the meaning of this Act: Provided further, That farmers and fruit growers, cooperative and other exchanges, or societies of a similar character shall not be included within the provisions of this section: And provided further, That the foregoing shall not be construed to prohibit the acquiring, storing, or holding of such articles for future sale for such advanced price as might prevail in the ordinary course of business and in a free and unrestricted market. Nothing contained in this section shall be construed to repeal the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act.

(72) SEC. *25. That the President is authorized and directed to procure, or aid in procuring, such stocks of nitrate of soda as he may determine to be necessary, and find available, for increasing agricultural production during the calendar years nineteen hundred and seventeen and eighteen, and to dispose of the same at cost payable in advance. For carrying out the purposes of this resolution, there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available immediately and until expended, the sum of $10,000,000, or so much thereof as may be necessary, and the President is authorized to make such regulations, and to use such means and agencies of the Government, as, in his discretion, he may deem best. The proceeds arising from the disposition of*

the nitrate of soda shall go into the Treasury as miscellaneous receipts.

(73) SEC. *26. That nothing in this Act shall be construed to repeal, modify, or affect either section six or section twenty of an Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen.*

Passed the House of Representatives June 23, 1917.

Attest:

SOUTH TRIMBLE,
Clerk.

Passed the Senate with amendments July 18 (calendar day, July 21), 1917.

Attest:

JAMES M. BAKER,
Secretary.

APPENDIX B.

TEXT OF THE LEVER ACT AS FINALLY PASSED.

40 Statutes at Large 276.

AN ACT

To provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement, of foods, feeds, fuel including fuel oil and natural

gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery, and equipment required for the actual production of foods, feeds, and fuel, hereafter in this Act called necessaries; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, and private controls, affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessaries during the war. For such purposes the instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions hereinafter set forth are created, established, conferred, and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this Act.

SEC. 2. That in carrying out the purposes of this Act the President is authorized to enter into any voluntary arrangements or agreements, to create and use any agency or agencies, to accept the services of any person without compensation, to cooperate with any agency or person, to utilize any department or agency of the Government, and to coordinate their activities so as to avoid any preventable loss or duplication of effort or funds.

SEC. 3. That no person acting either as a voluntary or paid agent or employee of the United States in any capacity, including an advisory capacity, shall solicit, induce, or attempt to induce any person or officer authorized to execute or to direct the execution of contracts on behalf of the United States to make any contract or give any order for the furnishing to the United States of work, labor, or services, or of materials, supplies, or other property of any kind or character, if such agent or employee has any pecuniary interest in such contract or order, or if he or any firm of which he is a member, or corporation, joint-stock company, or association of which he is an officer or stockholder, or in the pecuniary profits of which he is directly or indirectly interested, shall be a party thereto. Nor shall any agent or employee make, or permit any committee or other body of which he is a member to make, or participate in making, any recommendation

concerning such contract or order to any council, board, or commission of the United States, or any member or subordinate thereof, without making to the best of his knowledge and belief a full and complete disclosure in writing to such council, board, commission, or subordinate of any and every pecuniary interest which he may have in such contract or order and of his interest in any firm, corporation, company, or association being a party thereto. Nor shall he participate in the awarding of such contract or giving such order. Any willful violation of any of the provisions of this section shall be punishable by a fine of not more than $10,000, or by imprisonment of not more than five years, or both: *Provided*, That the provisions of this section shall not change, alter or repeal section forty-one of chapter three hundred and twenty-one, Thirty-fifth Statutes at Large.

SEC. 4. That it is hereby made unlawful for any person willfully to destroy any necessaries for the purpose of enhancing the price or restricting the supply thereof; knowingly to commit waste or willfully to permit preventable deterioration of any necessaries in or in connection with their production, manufacture, or distribution; to hoard, as defined in section six of this Act, any necessaries; to monopolize or attempt to monopolize, either locally or generally, any necessaries; to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge, in handling or dealing in or with any necessaries; to conspire, combine, agree, or arrange with any other person, (a) to limit the facilities for transporting, producing, harvesting, manufacturing, supplying, storing, or dealing in any necessaries; (b) to restrict the supply of any necessaries; (c) to restrict distribution of any necessaries; (d) to prevent, limit, or lessen the manufacture or production of any necessaries in order to enhance the price thereof, or (e) to exact excessive prices for any necessaries; or to aid or abet the doing of any act made unlawful by this section.

SEC. 5. That, from time to time, whenever the President shall find it essential to license the importation, man-

ufacture, storage, mining, or distribution of any necessaries, in order to carry into effect any of the purposes of this Act, and shall publicly so announce, no person shall, after a date fixed in the announcement, engage in or carry on any such business specified in the announcement of importation, manufacture, storage, mining, or distribution of any necessaries as set forth in such announcement, unless he shall secure and hold a license issued pursuant to this section. The President is authorized to issue such licenses and to prescribe regulations for the issuance of licenses and requirements for systems of accounts and auditing of accounts to be kept by licensees, submission of reports by them, with or without oath or affirmation, and the entry and inspection by the President's duly authorized agents of the places of business of licensees. Whenever the President shall find that any storage charge, commission, profit, or practice of any licensee is unjust, or unreasonable, or discriminatory and unfair, or wasteful, and shall order such licensee, within a reasonable time fixed in the order, to discontinue the same, unless such order, which shall recite the facts found, is revoked or suspended, such licensee shall, within the time prescribed in the order, discontinue such unjust, unreasonable, discriminatory and unfair storage charge, commission, profit, or practice. The President may, in lieu of any such unjust, unreasonable, discriminatory, and unfair storage charge, commission, profit, or practice, find what is a just, reasonable, nondiscriminatory and fair storage charge, commission, profit, or practice, and in any proceeding brought in any court such order of the President shall be prima facie evidence. Any person who, without a license issued pursuant to this section, or whose license shall have been revoked, knowingly engages in or carries on any business for which a license is required under this section, or willfully fails or refuses to discontinue any unjust, unreasonable, discriminatory and unfair storage charge, commission, profit, or practice, in accordance with the requirement of an order issued under this section, or any regulation prescribed under this section, shall, upon conviction thereof, be punished by a fine not exceeding

$5,000, or by imprisonment for not more than two years, or both: *Provided,* That this section shall not apply to any farmer, gardener, cooperative association of farmers or gardeners, including live-stock farmers, or other persons with respect to the products of any farm, garden, or other land owned, leased, or cultivated by him, nor to any retailer with respect to the retail business actually conducted by him, nor to any common carrier, nor shall anything in this section be construed to authorize the fixing or imposition of a duty or tax upon any article imported into or exported from the United States or any State, Territory, or the District of Columbia: *Provided further,* That for the purposes of this Act a retailer shall be deemed to be a person, copartnership, firm, corporation, or association not engaging in the wholesale business whose gross sales do not exceed $100,000 per annum.

SEC. 6. That any person who willfully hoards any necessaries shall upon conviction thereof be fined not exceeding $5,000 or be imprisoned for not more than two years, or both. Necessaries shall be deemed to be hoarded within the meaning of this Act when either (a) held, contracted for, or arranged for by any person in a quantity in excess of his reasonable requirements for use or consumption by himself and dependents for a reasonable time; (b) held, contracted for, or arranged for by any manufacturer, wholesaler, retailer, or other dealer in a quantity in excess of the reasonable requirements of his business for use or sale by him for a reasonable time, or reasonably required to furnish necessaries produced in surplus quantities seasonally throughout the period of scant or no production; or (c) withheld, whether by possession or under any contract or arrangement, from the market by any person for the purpose of unreasonably increasing or diminishing the price: *Provided,* That this section shall not include or relate to transactions on any exchange, board of trade, or similar institution or place of business as described in section thirteen of this Act that may be permitted by the President under the authority conferred upon him by said section thirteen: *Provided, however,* That any accumulating or withholding

by any farmer or gardener, cooperative association of farmers or gardeners, including live-stock farmers, or any other person, of the products of any farm, garden, or other land owned, leased, or cultivated by him shall not be deemed to be hoarding within the meaning of this Act.

SEC. 7. That whenever any necessaries shall be hoarded as defined in section six they shall be liable to be proceeded against in any district court of the United States within the district where the same are found and seized by a process of libel for condemnation, and if such necessaries shall be adjudged to be hoarded they shall be disposed of by sale in such manner as to provide the most equitable distribution thereof as the court may direct, and the proceeds thereof, less the legal costs and charges, shall be paid to the party entitled thereto. The proceedings of such libel cases shall conform as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. It shall be the duty of the United States attorney for the proper district to institute and prosecute any such action upon presentation to him of satisfactory evidence to sustain the same.

SEC. 8. That any person who willfully destroys any necessaries for the purpose of enhancing the price or restricting the supply thereof shall, upon conviction thereof, be fined not exceeding $5,000 or imprisoned for not more than two years, or both.

SEC. 9. That any person who conspires, combines, agrees, or arranges with any other person (a) to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any necessaries; (b) to restrict the supply of any necessaries; (c) to restrict the distribution of any necessaries; (d) to prevent, limit, or lessen the manufacture or production of any necessaries in order to enhance the price thereof shall, upon conviction thereof, be fined not exceeding $10,000 or be imprisoned for not more than two years, or both.

SEC. 10. That the President is authorized, from time to

time, to requisition foods, feeds, fuels, and other supplies necessary to the support of the Army or the maintenance of the Navy, or any other public use connected with the common defense, and to requisition, or otherwise provide, storage facilities for such supplies; and he shall ascertain and pay a just compensation therefor. If the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum will make up such amount as will be just compensation for such necessaries or storage space, and jurisdiction is hereby conferred on the United States District Courts to hear and determine all such controversies: *Provided*, That nothing in this section, or in the section that follows, shall be construed to require any natural person to furnish to the Government any necessaries held by him and reasonably required for consumption or use by himself and dependents, nor shall any person, firm, corporation, or association be required to furnish to the Government any seed necessary for the seeding of land owned, leased, or cultivated by them.

SEC. 11. That the President is authorized from time to time to purchase, to store, to provide storage facilities for, and to sell for cash at reasonable prices, wheat, flour, meal, beans, and potatoes: *Provided*, That if any minimum price shall have been theretofore fixed, pursuant to the provisions of section fourteen of this Act, then the price paid for any such articles so purchased shall not be less than such minimum price. Any moneys received by the United States from or in connection with the disposal by the United States of necessaries under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts.

SEC. 12. That whenever the President shall find it necessary to secure an adequate supply of necessaries for the sup-

port of the Army or the maintenance of the Navy, or for any other public use connected with the common defense, he is authorized to requisition and take over, for use or operation by the Government, any factory, packing house, oil pipe line, mine, or other plant, or any part thereof, in or through which any necessaries are or may be manufactured, produced, prepared, or mined, and to operate the same. Whenever the President shall determine that the further use or operation by the Government of any such factory, mine, or plant, or part thereof, is not essential for the national security or defense, the same shall be restored to the person entitled to the possession thereof. The United States shall make just compensation, to be determined by the President, for the taking over, use, occupation, and operation by the Government of any such factory, mine, or plant, or part thereof. If the compensation so determined be unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code. The President is authorized to prescribe such regulations as he may deem essential for carrying out the purposes of this section, including the operation of any such factory, mine, or plant, or part thereof, the purchase, sale, or other disposition of articles used, manufactured, produced, prepared, or mined therein, and the employment, control, and compensation of employees. Any moneys received by the United States from or in connection with the use or operation of any such factory, mine, or plant, or part thereof, may, in the discretion of the President, be used as a revolving fund for the purpose of the continued use or operation of any such factory, mine, or plant, or part thereof, and the accounts of each such factory, mine, plant, or part thereof, shall be kept separate and distinct. Any balance of such moneys not

used as part of such revolving fund shall be paid into the Treasury as miscellaneous receipts.

SEC. 13. That whenever the President finds it essential in order to prevent undue enhancement, depression, or fluctuation of prices of, or in order to prevent injurious speculation in, or in order to prevent unjust market manipulation or unfair and misleading market quotations of the prices of necessaries, hereafter in this section called evil practices, he is authorized to prescribe such regulations governing, or may either wholly or partly prohibit, operations, practices, and transactions at, on, in or under the rules of any exchange, board of trade, or similar institution or place of business as he may find essential in order to prevent, correct, or remove such evil practices. Such regulations may require all persons coming within their provisions to keep such records and statements of account, and may require such persons to make such returns, verified under oath or otherwise, as will fully and correctly disclose all transactions at, in or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, including the making, execution, settlement, and fulfillment thereof. He may also require all persons acting in the capacity of a clearing house, clearing association, or similar institution, for the purpose of clearing, settling, or adjusting transactions at, in, or on, or under the rules of any such exchange, board of trade, or similar institution or place of business, to keep such records and to make such returns as will fully and correctly disclose all facts in their possession relating to such transactions, and he may appoint agents to conduct the investigations necessary to enforce the provisions of this section and all rules and regulations made by him in pursuance thereof, and may fix and pay the compensation of such agents. Any person who willfully violates any regulation made pursuant to this section, or who knowingly engages in any operation, practice, or transaction prohibited pursuant to this section, or who willfully aids or abets any such violation or any such prohibited operation, practice, or transaction, shall, upon conviction thereof, be

punished by a fine not exceeding $10,000 or by imprisonment for not more than four years, or both.

SEC. 14. That whenever the President shall find that an emergency exists requiring stimulation of the production of wheat and that it is essential that the producers of wheat, produced within the United States, shall have the benefits of the guaranty provided for in this section, he is authorized, from time to time, seasonably and as far in advance of seeding time as practicable, to determine and fix and to give public notice of what, under specified conditions, is a reasonable guaranteed price for wheat, in order to assure such producers a reasonable profit. The President shall thereupon fix such guaranteed price for each of the official grain standards for wheat as established under the United States grain standards Act, approved August eleventh, nineteen hundred and sixteen. The President shall from time to time establish and promulgate such regulations as he shall deem wise in connection with such guaranteed prices, and in particular governing conditions of delivery and payment, and differences in price for the several standard grades in the principal primary markets of the United States, adopting number one northern spring or its equivalent at the principal interior primary markets as the basis. Thereupon, the Government of the United States hereby guarantees every producer of wheat produced within the United States, that, upon compliance by him with the regulations prescribed, he shall receive for any wheat produced in reliance upon this guarantee within the period, not exceeding eighteen months, prescribed in the notice, a price not less than the guaranteed price therefor as fixed pursuant to this section. In such regulations the President shall prescribe the terms and conditions upon which any such producer shall be entitled to the benefits of such guaranty. The guaranteed prices for the several standard grades of wheat for the crop of nineteen hundred and eighteen, shall be based upon number one northern spring or its equivalent at not less than $2 per bushel at the principal interior primary markets. This guaranty shall not be dependent upon the action of the President under the first part of this section, but is hereby

made absolute and shall be binding until May first, nineteen hundred and nineteen. When the President finds that the importation into the United States of any wheat produced outside of the United States materially enhances or is likely materially to enhance the liabilities of the United States under guaranties of prices therefor made pursuant to this section, and ascertains what rate of duty, added to the then existing rate of duty on wheat and to the value of wheat at the time of importation, would be sufficient to bring the price thereof at which imported up to the price fixed therefor pursuant to the foregoing provisions of this section, he shall proclaim such facts, and thereafter there shall be levied, collected, and paid upon wheat when imported in addition to the then existing rate of duty, the rate of duty so ascertained; but in no case shall any such rate of duty be fixed at an amount which will effect a reduction of the rate of duty upon wheat under any then existing tariff law of the United States. For the purpose of making any guaranteed price effective under this section, or whenever he deems it essential in order to protect the Government of the United States against material enhancement of its liabilities arising out of any guaranty under this section, the President is authorized also, in his discretion, to purchase any wheat for which a guaranteed price shall be fixed under this section, and to hold, transport, or store it, or to sell, dispose of, and deliver the same to any citizen of the United States or to any Government engaged in war with any country with which the Government of the United States is or may be at war or to use the same as supplies for any department or agency of the Government of the United States. Any moneys received by the United States from or in connection with the sale or disposal of wheat under this section may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any balance of such moneys not used as part of such revolving fund shall be covered into the Treasury as miscellaneous receipts.

SEC. 15. That from and after thirty days from the date of the approval of this Act no foods, fruits, food materials,

or feeds shall be used in the production of distilled spirits for beverage purposes: *Provided,* That under such rules, regulations, and bonds as the President may prescribe, such materials may be used in the production of distilled spirits exclusively for other than beverage purposes, or for the fortification of pure sweet wines as defined by the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen. Nor shall there be imported into the United States any distilled spirits. Whenever the President shall find that limitation, regulation, or prohibition of the use of foods, fruits, food materials, or feeds in the production of malt or vinous liquors for beverage purposes, or that reduction of the alcoholic content of any such malt or vinous liquor, is essential, in order to assure an adequate and continuous supply of food, or that the national security and defense will be subserved thereby, he is authorized, from time to time, to prescribe and give public notice of the extent of the limitation, regulation, prohibition, or reduction so necessitated. Whenever such notice shall have been given and shall remain unrevoked no person shall, after a reasonable time prescribed in such notice, use any foods, fruits, food materials, or feeds in the production of malt or vinous liquors, or import any such liquors except under license issued by the President and in compliance with rules and regulations determined by him governing the production and importation of such liquors and the alcoholic content thereof. Any person who willfully violates the provisions of this section, or who shall use any foods, fruits, food materials, or feeds in the production of malt or vinous liquors, or who shall import any such liquors, without first obtaining a license so to do when a license is required under this section, or who shall violate any rule or regulation made under this section, shall be punished by a fine not exceeding $5,000, or by imprisonment for not more than two years, or both: *Provided further,* That nothing in this section shall be construed to authorize the licensing of the manufacture of vinous or malt liquors in any State, Territory, or the District of Columbia, or any civil subdivision thereof, where the manufacture of such vinous or malt liquor is prohibited.

SEC. 16. That the President is authorized and directed to commandeer any or all distilled spirits in bond or in stock at the date of the approval of this Act for redistillation, in so far as such redistillation may be necessary to meet the requirements of the Government in the manufacture of munitions and other military and hospital supplies, or in so far as such redistillation would dispense with the necessity of utilizing products and materials suitable for foods and feeds in the future manufacture of distilled spirits for the purposes herein enumerated. The President shall determine and pay a just compensation for the distilled spirits so commandeered; and if the compensation so determined be not satisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation for such spirits, in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

SEC. 17. That every person who willfully assaults, resists, impedes, or interferes with any officer, employee, or agent of the United States in the execution of any duty authorized to be performed by or pursuant to this Act shall upon conviction thereof be fined not exceeding $1,000 or be imprisoned for not more than one year, or both.

SEC. 18. That the sum of $2,500,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available until June thirtieth, nineteen hundred and eighteen, for the payment of such rent, the expense, including postage, of such printing and publications, the purchase of such material and equipment, and the employment of such persons and means, in the city of Washington and elsewhere, as the President may deem essential.

SEC. 19. That for the purposes of this Act the sum of $150,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be available during the time this Act is in effect: *Provided,* That no

part of this appropriation ..... be expended for the purposes described in the preceding section: *Provided further,* That itemized statements covering all purchases and disbursements under this and the preceding section shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives on or before the twenty-fifth day of each month after the taking effect of this Act, covering the business of the preceding month, and said statements shall be subject to public inspection.

SEC. 20. That the employment of any person under the provisions of this Act shall not exempt any such person from military service under the provisions of the selective draft law approved May eighteenth, nineteen hundred and seventeen.

SEC. 21. The President shall cause a detailed report to be made to the Congress on the first day of January each year of all proceedings had under this Act during the year preceding. Such report shall, in addition to other matters, contain an account of all persons appointed or employed, the salary or compensation paid or allowed each, the aggregate amount of the different kinds of property purchased or requisitioned, the use and disposition made of such property, and a statement of all receipts, payments, and expenditures, together with a statement showing the general character, and estimated value of all property then on hand, and the aggregate amount and character of all claims against the United States growing out of this Act.

SEC. 22. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered.

SEC. 23. That words used in this Act shall be construed to import the plural or the singular, as the case demands. The word "person," wherever used in this Act, shall include individuals, partnerships, associations, and corpora-

tions. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any partnership, association, or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission, or failure of such partnership, association, or corporation as well as that of the person.

SEC. 24. That the provisions of this Act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President; but the termination of this Act shall not affect any act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this Act; but all rights and liabilities under this Act arising before its termination shall continue and may be enforced in the same manner as if the Act had not terminated. Any offense committed and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this Act had not been terminated.

SEC. 25. That the President of the United States shall be, and he is hereby, authorized and empowered, whenever and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of production, sale, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission during the war or for such part of said time as in his judgment may be necessary.

That if, in the opinion of the President, any such producer or dealer fails or neglects to conform to such prices or regulations, or to conduct his business efficiently under

the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such agency as he may direct during the period of the war or for such part of said time as in his judgment may be necessary.

That any producer or dealer whose plant, business, and appurtenances shall have been requisitioned or taken over by the President shall be paid a just compensation for the use thereof during the period that the same may be requisitioned or taken over as aforesaid, which compensation the President shall fix or cause to be fixed by the Federal Trade Commission.

That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

While operating or causing to be operated any such plants or business, the President is authorized to prescribe such regulations as he may deem essential for the employment, control, and compensation of the employees necessary to conduct the same.

Or if the President of the United States shall be of the opinion that he can thereby better provide for the common defense, and whenever, in his judgment, it shall be necessary for the efficient prosecution of the war, then he is

hereby authorized and empowered to require any or all producers of coal and coke, either in any special area or in any special coal fields, or in the entire United States, to sell their products only to the United States through an agency to be designated by the President, such agency to regulate the resale of such coal and coke, and the prices thereof, and to establish rules for the regulation of and to regulate the methods of production, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign, and to make payment of the purchase price thereof to the producers thereof, or to the person or persons legally entitled to said payment.

That within fifteen days after notice from the agency so designated to any producer of coal and coke that his, or its, output is to be so purchased by the United States as hereinbefore described, such producer shall cease shipments of said product upon his own account and shall transmit to such agency all orders received and unfilled or partially unfilled, showing the exact extent to which shipments have been made thereon, and thereafter all shipments shall be made only on authority of the agency designated by the President, and thereafter no such producer shall sell any of said products except to the United States through such agency, and the said agency alone is hereby authorized and empowered to purchase during the continuance of the requirement the output of such producers.

That the prices to be paid for such products so purchased shall be based upon a fair and just profit over and above the cost of production, including proper maintenance and depletion charges, the reasonableness of such profits and cost of production to be determined by the Federal Trade Commission, and if the prices fixed by the said commission of any such product purchased by the United States as hereinbefore described be unsatisfactory to the person or persons entitled to the same, such person or persons shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum,

will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

All such products so sold to the United States shall be sold by the United States at such uniform prices, quality considered, as may be practicable and as may be determined by said agency to be just and fair.

Any moneys received by the United States for the sale of any such coal and coke may, in the discretion of the President, be used as a revolving fund for further carrying out the purposes of this section. Any moneys not so used shall be covered into the Treasury as miscellaneous receipts.

That when directed by the President, the Federal Trade Commission is hereby required to proceed to make full inquiry, giving such notice as it may deem practicable, into the cost of producing under reasonably efficient management at the various places of production the following commodities, to wit, coal and coke.

The books, correspondence, records, and papers in any way referring to transactions of any kind relating to the mining, production, sale, or distribution of all mine operators or other persons whose coal and coke have or may become subject to this section, and the books, correspondence, records, and papers of any person applying for the purchase of coal and coke from the United States shall at all times be subject to inspection by the said agency, and such person or persons shall promptly furnish said agency any data or information relating to the business of such person or persons which said agency may call for, and said agency is hereby authorized to procure the information in reference to the business of such coal-mine operators and producers of coke and customers therefor in the manner provided for in sections six and nine of the Act of Congress approved September twenty-sixth, nineteen hundred and fourteen, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and

for other purposes," and said agency is hereby authorized and empowered to exercise all the powers granted to the Federal Trade Commission by said Act for the carrying out of the purposes of this section.

Having completed its inquiry respecting any commodity in any locality, it shall, if the President has decided to fix the prices at which any such commodity shall be sold by producers and dealers generally, fix and publish maximum prices for both producers of and dealers in any such commodity, which maximum prices shall be observed by all producers and dealers until further action thereon is taken by the commission.

In fixing maximum prices for producers the commission shall allow the cost of production, including the expense of operation, maintenance, depreciation, and depletion, and shall add thereto a just and reasonable profit.

In fixing such prices for dealers, the commission shall allow the cost to the dealer and shall add thereto a just and reasonable sum for his profit in the transaction. .

The maximum prices so fixed and published shall not be construed as invalidating any contract in which prices are fixed, made in good faith, prior to the establishment and publication of maximum prices by the commission.

Whoever shall, with knowledge that the prices of any such commodity have been fixed as herein provided, ask, demand, or receive a higher price, or whoever shall, with knowledge that the regulations have been prescribed as herein provided, violate or refuse to conform to any of the same, shall, upon conviction, be punished by fine of not more than $5,000, or by imprisonment for not more than two years, or both. Each independent transaction shall constitute a separate offense.

Nothing in this section shall be construed as restricting or modifying in any manner the right the Government of the United States may have in its own behalf or in behalf of any other Government at war with Germany to purchase, requisition, or take over any such commodities for the equipment, maintenance, or support of armed forces at any

price or upon any terms that may be agreed upon or otherwise lawfully determined.

SEC. 26. That any person carrying on or employed in commerce among the several States, or with foreign nations, or with or in the Territories or other possessions of the United States in any article suitable for human food, fuel, or other necessaries of life, who, either in his individual capacity or as an officer, agent, or employee of a corporation or member of a partnership carrying on or employed in such trade, shall store, acquire, or hold, or who shall destroy or make away with any such article for the purpose of limiting the supply thereof to the public or affecting the market price thereof in such commerce, whether temporarily or otherwise, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both: *Provided,* That any storing or holding by any farmer, gardner, or other person of the products of any farm, garden, or other land cultivated by him shall not be deemed to be a storing or holding within the meaning of this Act: *Provided further,* That farmers and fruit growers, cooperative and other exchanges, or societies of a similar character shall not be included within the provisions of this section: *Provided further,* That this section shall not be construed to prohibit the holding or accumulating of any such article by any such person in a quantity not in excess of the reasonable requirements of his business for a reasonable time or in a quantity reasonably required to furnish said articles produced in surplus quantities seasonally throughout the period of scant or no production. Nothing contained in this section shall be construed to repeal the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act.

SEC. 27. That the President is authorized to procure, or aid in procuring, such stocks of nitrate of soda as he may determine to be necessary, and find available, for increas-

ing agricultural production during the calendar years nineteen hundred and seventeen and eighteen, and to dispose of the same for cash at cost, including all expenses connected therewith. For carrying out the purposes of this section, there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available immediately and until expended, the sum of $10,000,000, or so much thereof as may be necessary, and the President is authorized to make such regulations, and to use such means and agencies of the Government, as, in his discretion, he may deem best. The proceeds arising from the disposition of the nitrate of soda shall go into the Treasury as miscellaneous receipts.

Approved, August 10, 1917.

In the Supreme Court of the United States

OCTOBER TERM, 1921.

PINE HILL COAL COMPANY, INC., *Appellant*,
v.
THE UNITED STATES.
No. 101.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case is here on appeal from the judgment of the Court of Claims dismissing claimant's petition on demurrer. R. 48. The petition recites action taken under authority granted by the Act of August 10, 1917, c. 53, 40 Stat. 276, by the President and the Fuel Administration establishing from time to time maximum prices for which anthracite coal might be sold on the market by producers to private consumers. From September, 1917, to January, 1919, claimant sold 239,400 tons at prices thus fixed. During the same period, considerable additional tonnage, comprising varieties the price of which had not been fixed, was sold at market prices. Lumping together both these items, the cost of production (in-

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cluding expenses of operation, maintenance, depreciation and depletion) of all coal sold during this period is alleged to have been $838.25 more than total receipts. R. 24. Losses and profits in detail for each month are specified but in every instance these monthly computations are based on production cost of coal sold under government prices mingled with that sold at unregulated market prices. It is averred that the maximum prices fixed by the government were unsatisfactory and did not afford just compensation; that a just and reasonable profit, and a profit which might have been received but for the price restriction, would have been 75 cents per ton. Adding this in for the entire period claimant concludes that federal regulation has deprived it of $239,261.96.

The duty prescribed to the administration by §25, paragraph 15, to fix a price including just and reasonable profit over costs, etc., is pleaded and as well the provisions of §25, paragraph 4, providing for compensation in the contingencies therein set forth. It is then alleged that, in consequence of the statute and of the administrative orders thereunder, a contract was created between the claimant and the United States and that by this contract the United States was obligated to claimant for a sum which added to the amount received from sales at government prices would be just compensation for the coal thus sold. The sum claimed is $239,261.96, which, as seen, represents profits at 75 cents per ton.

ARGUMENT.

Definition of appellant's contentions.

Claimant seems to concede the constitutionality of the statute and the power of Congress in time of war and in the interest of its successful prosecution to fix the price and regulate the sale of this indispensable commodity. The constitutional validity of these provisions cannot be doubted.

Cf. *Hamilton* v. *Kentucky Distilleries*, 251 U. S. 146;

Jacob Ruppert v. *Caffey*, 251 U. S. 264;

Block v. *Hirsh*, 41 Sup. Ct. Rep. 458;

Marcus Brown Holding Co. v. *Feldman*, 41 Sup. Ct. Rep. 465;

People ex rel. Realty Corporation v. *La Fetra*, 230 N. Y. 429.

If the hypothesis be indulged that the statute is unconstitutional or that administrative action taken thereunder is void because not justified thereby, it would follow that jurisdiction in the Court of Claims, as defined by §145 of the Judicial Code, to adjudicate any loss thereby occasioned does not exist. Counsel are aware of no case holding generally that obedience to unconstitutional and void legislative regulation or to confiscatory administrative orders raises an obligation cognizable in the Court of Claims to compensate for loss of profits thereby occasioned.

Claims founded on the Constitution belonging to the class justiciable in the Court of Claims are those sounding *in contract only*.

Mann v. *United States*, 32 Ct. Cl. 580;
Hill v. *United States*, 149 U. S. 593, 598-9;
Harley v. *United States*, 198 U. S. 229, 234;
Russell v. *United States*, 182 U. S. 516, 530;
Tempel v. *United States*, 248 U. S. 121.

An obligation to indemnify arises only when the injury inflicted is the consequence of official action having the express or necessarily implied authority of a statute.

Hollister v. *Benedict Mfg. Co.*, 113 U. S. 59, 67;
United States v. *Lynah*, 188 U. S. 445, 461–468;
United States v. *North American Co.*, 253 U. S. 330, 335;
Sutton v. *United States*, decided June 1, 1921, 41 Sup. Ct. Rep. 563.

No contract enforceable against the United States in the Court of Claims can be implied from a tort.

Bigby v. *United States*, 188 U. S. 400, 404-407;
Schillinger v. *United States*, 155 U. S. 163;
Basso v. *United States*, 239 U. S. 602;
United States v. *Holland-America Lijn.*, 254 U. S. 148.

Or from the act of an officer or agent acting without the scope of his authority as defined by law; e. g., if he acts under an unconstitutional statute. The prohibitions of the fifth amendment are directed against the United States, not against public officers proceeding without legislative authority.

Cf. *Hooe* v. *United States*, 218 U. S. 322, 326, 335.

If, therefore, claimant's expected profits were confiscated by an administrative order unauthorized by law or one based on a void statute, the injury com-

plained of was either a simple tortious interference with claimant's property or at most it was an act not contractually binding the United States because of lack of authority in the official promulgating the order. In either case jurisdiction under § 145 is lacking. To state the matter in another form: If this Act was unconstitutional or if the prices administratively fixed were confiscatory, claimant's remedy was to refuse obedience or to enjoin unauthorized interference with his business.[1]

Since it is established that injunction is ordinarily the remedy available against unconstitutional legislation or confiscatory regulation, claimant is driven to the contention that *by the terms of the Lever Act* Congress has acknowledged the contractual liability of the United States to reimburse profits of which it was deprived by valid price regulation and has afforded a remedy by which they may be recovered.

This contention is based on paragraphs 1 and 4 of §25 of the Lever Act, and the question presented, therefore, is what is the proper construction of the text.

Indemnity to regulated industries is not generally an incident, nor is it a condition to legislative control.

Paragraph 1 is manifestly but an exercise of power of regulation and considered by itself no assumption of obligation to compensate for losses can be implied from its terms.

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[1] Cf. *In re Engelhard*, 231 U. S. 646.

The paragraph imposing penalties is hardly applicable. But even if it were it would not be an effectual obstacle to relief by injunction. *Oklahoma Operating Co.* v. *Love*, 252 U. S. 331.

Public regulation of industries does not involve exercise of the power of eminent domain. Contentions that reasonable regulation, imposing burdens or diminishing the usefulness of property or the returns otherwise obtainable from it, amounts to an expropriation requiring indemnity have been everywhere denied.

Legal Tender Cases, 12 Wall. 457, 551;
Transportation Co. v. *Chicago*, 99 U. S. 635, 642;
Gibson v. *United States*, 166 U. S. 269, 271, 275–6;
Scranton v. *Wheeler*, 179 U. S. 141, 164;
Wisconsin, etc., R'd. v. *Jacobson*, 179 U. S. 287, 296, 301;
Railroad v. *Mottley*, 219 U. S. 467;
C. B. & Q. Ry. v. *Drainage Com'rs. etc.*, 200 U. S. 561, 582–4, 590–4;
Atlantic Coast Line v. *Goldsboro*, 232 U. S. 548, 558;
Hamilton v. *Kentucky Distilleries*, 251 U. S. 146, 156–7;
Budd v. *New York*, 143 U. S. 517, 528;
Brass v. *Stoeser*, 153 U. S. 391, 399.

Does the text of paragraph 4 alter this principle and has Congress therein admitted obligation to reimburse whenever prices fixed under paragraph 1 failed to provide expected profits?

Many statutes controlling industries and prices have been passed. In none of them, perhaps, does any provision for indemnity by the sovereign appear. The rule of uncompensated obedience to regulation under State police power or under delegated Federal power has been so generally carried out

in legislation that it will require clear and unmistakable language to convince this court that Congress, when it undertook during the war to fix maximum prices for coal, intended also to obligate the United States to reimburse the regulated industries the profits which might have accrued in the absence of regulation.[2]

Appellant did not attempt to enjoin the orders which it now says confiscated its profits. It complied with them. If, in fact, Congress intended to consent that the government may now be sued for these profits, this intention would naturally have been clothed in clear language and not left to vague implication and uncertain inference.

In its main features the Lever Act is a statute contemplating and providing for war time *regulation* of production, prices, sale and distribution of necessaries. In effect it declares that these things were affected with a public interest and that government control was essential to effective prosecution of the war. Wherever the power of eminent domain (or as usually designated, the power of requisition) is brought into play, the statute makes careful and ample provision for indemnity and for judicial review of compensation administratively determined.[3]

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[2] It may be noted here that in order to stimulate wheat production Congress by §14 declared an obligation which took the form of a guarantee of minimum prices to producers of wheat. But this obligation is declared in clear and unmistakable language.

[3] By §10, when food or fuel is requisitioned for the support of the army or the maintenance of the navy or any other public use connected with the common defense, indemnity is provided for, which, if unsatisfactory, may be adjusted by suit against the United States.

But there can be no substantial doubt that paragraph 1 of §25 was enacted with the single design of subjecting the coal industry to legitimate war time restrictions as to price and distribution as *between producer and customer generally*. As in similar statutes creating public utilities commissions, administrative agencies were set up to carry out the legislative purpose and administrative machinery was provided for inquiry into cost of production, etc., to furnish the basis for price regulations.[4]

By §12, for the same public purposes, authority is given to requisition and take over factories, mines, etc. Compensation and judicial review thereof, if unsatisfactory, is provided for.

By §16, on like condition of indemnity and judicial review, distilled spirits may be commandeered for manufacture of munitions, military and hospital supplies.

By paragraphs 6–10, inclusive, of § 25 the President is empowered to require any or all producers of coal or coke to sell their products only to the United States through a designated agency, and through this agency to resell the coal under regulations to be established. In the exercise of this power authority is given to fix a price to producers and to be received by the government on resale. Since this provision involved, practically, an expropriation of the products of mines, it is provided that the prices to be paid include a profit above cost of production, and, if the price fixed be unsatisfactory, that the producer be paid 75 per cent of the amount fixed and be entitled to sue the United States to recover such additional sum as would constitute just compensation.

[4] Paragraphs 13–15 of § 25 read:

Having completed its inquiry respecting any commodity in any locality, it shall, if the President has decided to fix the prices at which any such commodity shall be sold by producers and dealers generally, fix and publish maximum prices for both producers of and dealers in any such commodity, which maximum prices shall be observed by all producers and dealers until further action thereon is taken by the commission.

In fixing maximum prices for producers the commission shall allow the cost of production, including the expense of operation, maintenance, depreciation and depletion, and shall add thereto a just and reasonable profit.

In fixing such prices for dealers, the commission shall allow the cost to the dealer and shall add thereto a just and reasonable sum for his profit in the transaction.

The legislative history of § 25 is somewhat unusual. It was first introduced as a whole in the Senate as an amendment to a pending bill passed by the House (Cong. Rec., 65th Cong., 1st Sess., vol. 55, Pt. 5, pp. 5310–11) and was substantially altered in conference. In reporting it to the House, the House Conferees called attention explicitly to the provisions allowing compensation in cases where the power of requisition or the power to compel purchase was conferred, but they omitted any reference whatever to the extraordinary contention of claimant that the amendment was designed to obligate the government to reimburse operators for all losses occasioned by the fixing of prices. See Conferees Report, H. R. 65th Cong., 1st Sess., Report No. 117, page 18, amendment 69; Cong. Rec. 65th Cong., 1st Sess., vol. 55, pt. 6, pp. 5734, 5738.[5]

[5] In the conference report § 25 appears as Senate Amendment 69. The statement of the managers on the part of the House reads:

Amendment No. 69: This amendment inserts a new section 22, providing for comprehensive governmental control of the coal and coke business, including the fixing and regulating of prices, the requisitioning and operating of plants and businesses, the governmental purchase and sale of coal and coke, and a detailed investigation of the coal and coke business. The House recedes and agrees with an amendment changing the section number to 25; limiting the operation of the section to the period of the war; extending the power of regulation by the President to include the method of production, in addition to the sale, shipment, distribution, apportionment, or storage, of coal and coke; eliminating recourse to the Board of Mediation and Conciliation by any person dissatisfied with wages fixed by the President; reducing the amount to be paid to any person dissatisfied with the compensation fixed in the exercise of the requisitioning or purchasing power to 75 per cent instead of the entire amount, with the right to sue the United States to recover such further sum as added to said 75 per cent will constitute just compensation; eliminating the provision that there shall be but one dealer between the producer and consumer in fixing maximum prices for dealers; and making other changes of a minor or incidental nature.

Guided by the foregoing we come to consider the connection between regulations prescribed in paragraph 1 and the provisions of paragraphs 2 to 5 and the real significance of the language used in paragraph 4. The text is inserted for convenience:

> SEC. 25. That the President of the United States shall be, and he is hereby, authorized and empowered, whenever and wherever in his judgment necessary for the efficient prosecution of the war, to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of production, sale, shipment, distribution, apportionment, or storage thereof among dealers and consumers, domestic or foreign; said authority and power may be exercised by him in each case through the agency of the Federal Trade Commission during the war or for such part of said time as in his judgment may be necessary.
>
> That if, in the opinion of the President, any such producer or dealer fails or neglects to conform to such prices or regulations, or to conduct his business efficiently under the regulations and control of the President as aforesaid, or conducts it in a manner prejudicial to the public interest, then the President is hereby authorized and empowered in every such case to requisition and take over the plant, business, and all appurtenances thereof belonging to such producer or dealer as a going concern, and to operate or cause the same to be operated in such manner and through such

agency as he may direct during the period of the war or for such part of said time as in his judgment may be necessary.

That any producer or dealer whose plant, business, and appurtenances shall have been requisitioned or taken over by the President shall be paid a just compensation for the use thereof during the period that the same may be requisitioned or taken over as aforesaid, which compensation the President shall fix or cause to be fixed by the Federal Trade Commission.

That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

While operating or causing to be operated any such plants or business, the President is authorized to prescribe such regulations as he may deem essential for the employment, control, and compensation of the employees necessary to conduct the same.

The purpose of paragraphs 2–5 seems very clear. It was, of course, foreseen that some coal producers,

dissatisfied with the government price, might stop production, hoping to conserve their holdings to be mined and sold after the war at better profit. To prevent lessening of supply on this and on other accounts paragraph 2 provides for requisitioning the plant or the business of such producers, etc., *as a going concern* and its operation through agencies selected by the government and under regulations to be prescribed. Since this involved exercise of eminent domain power, indemnity and judicial review thereof were carefully provided for.

As, conceivably, mines would be shut down only because the price for coal taken therefrom was fixed too low, taking over the mine would be necessary only when the owner, dissatisfied with the price, resorted to the expedient of ceasing or curtailing operation. Paragraph 4 can be easily read as applicable entirely to the provisions authorizing such federal operation in case of the owner's failure or neglect. Without violent distortion, its text may be construed as meaning that if, *because of dissatisfaction with the government price*, the producer ceased to operate, etc., thus necessitating a requisition of either the mine or the business, the owner would be entitled to 75 per cent of compensation administratively determined and to sue for a balance representing just compensation.

Moreover, by a fair construction of the wide powers conferred by paragraph 2, governmental expropriation (in the case of neglect or failure to operate) might be either complete or partial.

a. The government, if thought necessary, might take over the entire operation of a plant, including

mining of the coal, paying employees, and selling the product. In this case, obviously, compensation would be measured by whatever sum might be adjudicated as just for temporary use of the entire property—the lease value, perhaps, plus consequential damages.

b. It might, however, be thought more judicious to leave to the owner the actual operation of his mine under prescribed regulations and government supervision, the government taking over *only the business of selling and distributing the product*, i. e. to take over the mined coal on government account and direct its distribution on government account. In that case, since the price received by or credited to the business would be the government price, and since this would be the relevant and controlling fact both in inducing dissatisfaction in the mind of the owner and in the judicial adjustment of compensation, the meaning of the phrase "if the prices so fixed" employed in paragraph 4 becomes comprehensible.

Mention has already been made of the power granted to require all producers to sell only to the United States at a fixed price judicially reviewable if unsatisfactory. Paragraphs 6, 8. Paragraph 4 contains identical provisions for judicial review of prices fixed in the special case now under discussion, namely, when, because of recalcitrancy of a producer the government under paragraph 2 compels him for this reason to turn over the sale of his product on government account.

It can not be denied that the text is awkward and obscure and that some astuteness in construction will be requisite. It is insisted that an obligation to indemnify is assumed in this statute only when an expropriation or requisition is authorized. The construction urged by appellant that, in complete ignorance of the enormous liabilities to be fastened on the taxpayer, and contrary to all precedent, Congress, by force of an obscure implication hidden in paragraph 4, intended to involve the government in suits to recover lost profits *by every coal producer and dealer in the United States who operated under Federal regulation* whether his plant was or was not requisitioned, is wholly unreasonable.

As already argued, if confiscation of appellant's profits was threatened by government price fixing, its remedy was to seek an injunction.

Moreover, it is impossible to apply appellant's interpretation to the text. There was no exercise of authority conferred by paragraph 2 to requisition appellant's plant or product or of that conferred by paragraph 6 to force sale of its product to the government. Its coal was sold to private customers and though it now protests that it was unsatisfactory and unprofitable, nevertheless the government price was paid to it in full by its customers.

Applying its contention that paragraph 4 created a federal obligation for the difference between the government price and an adequate price, what was the course there marked out to secure relief? Applying literally the text, it was to accept 75 per cent

only from its customers and then to sue the United States for the remainder. It would follow that the private purchaser, if the seller was dissatisfied, need pay only 75 per cent, leaving the government to pay the balance. In other words, the government stood ready to pay the difference between 75 per cent of the fixed price and the fair market value of the coal although none of it was taken or used for any public purpose whatever. An obvious absurdity!

Moreover, confronted with the fact that it has received not 75 per cent but the whole of the government price from its customers, appellant is unable to bring its case within even the letter of the remedy provided by the statute. And, therefore, conceding even this absurd construction, the government may defend this action upon the ground that acceptance of the full price has, under the literal terms of the statute, barred this claim.

Realization of this has doubtless driven counsel to the contention that the language of paragraph 4 may be construed to mean that after receiving from its customers the *whole of the price fixed*, appellant was thereafter entitled to sue the United States to recover lost profits. It becomes, however, immediately manifest that this construction can be supported only by forcibly interpolating words which do not appear in the paragraph.

To connect paragraph 4 with the price-fixing power conferred by paragraph 1 appellant would have the

court amend paragraph 4 so as to make it read substantially as follows:

> That if the prices so fixed *be not satisfactory to the person or persons entitled to receive the same, such persons shall be entitled to receive from the persons to whom coal has been sold the price fixed therefor by the President, and shall be entitled to sue the United States to recover such further sum as added to said price shall afford a fair and reasonable profit on the coal sold to said consumers*, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph 20, and section one hundred and forty-five of the Judicial Code.

The words in italics are not in the statute and to sustain appellant's contention must be forced in by construction.

Considering that thereby the United States are onerated with an unprecedented obligation to bear losses occasioned by the necessary and usual exercise of well established powers, the government confi-

dently submits that an interpretation so distorted and radical will not be accepted and that this court will be guided by the clear presumption that, in regulating between producer and consumer industries affected in time of war by a vital public interest, Congress did not intend to authorize suit against the government to recover profits which otherwise, possibly, might have accrued.

The statute enjoined federal investigation of cost of production and required addition thereto of a fair profit in establishing the government price. It may be true that, though compliance with the statute was attempted, the price fixed by the Fuel Administration possibly failed to afford expected profits on the output of every mine. But it does not necessarily follow that profits would otherwise have actually accrued. This is a case where Congress has declared the essential need, in the common interest and in the common defense, of restricting the price of a necessary commodity. In isolated instances the result has been that expected profits did not materialize. If, however, because of failure to restrain its mounting costs the war had been lost, it is not inconceivable that not only appellant's profits but its mine and plant might have met destruction at the hands of the enemy. Since appellant did not see fit to test by injunction the validity and reasonableness of the price-fixing order of the Fuel Administration, the disappointment of which it now complains must be

borne as were thousands of others occasioned by the war without recompense from the Treasury.

JAMES M. BECK,
Solicitor General.

WILLIAM D. RITER,
Assistant Attorney General.

CHARLES S. LAWRENCE,
Attorney.

NOVEMBER, 1921.

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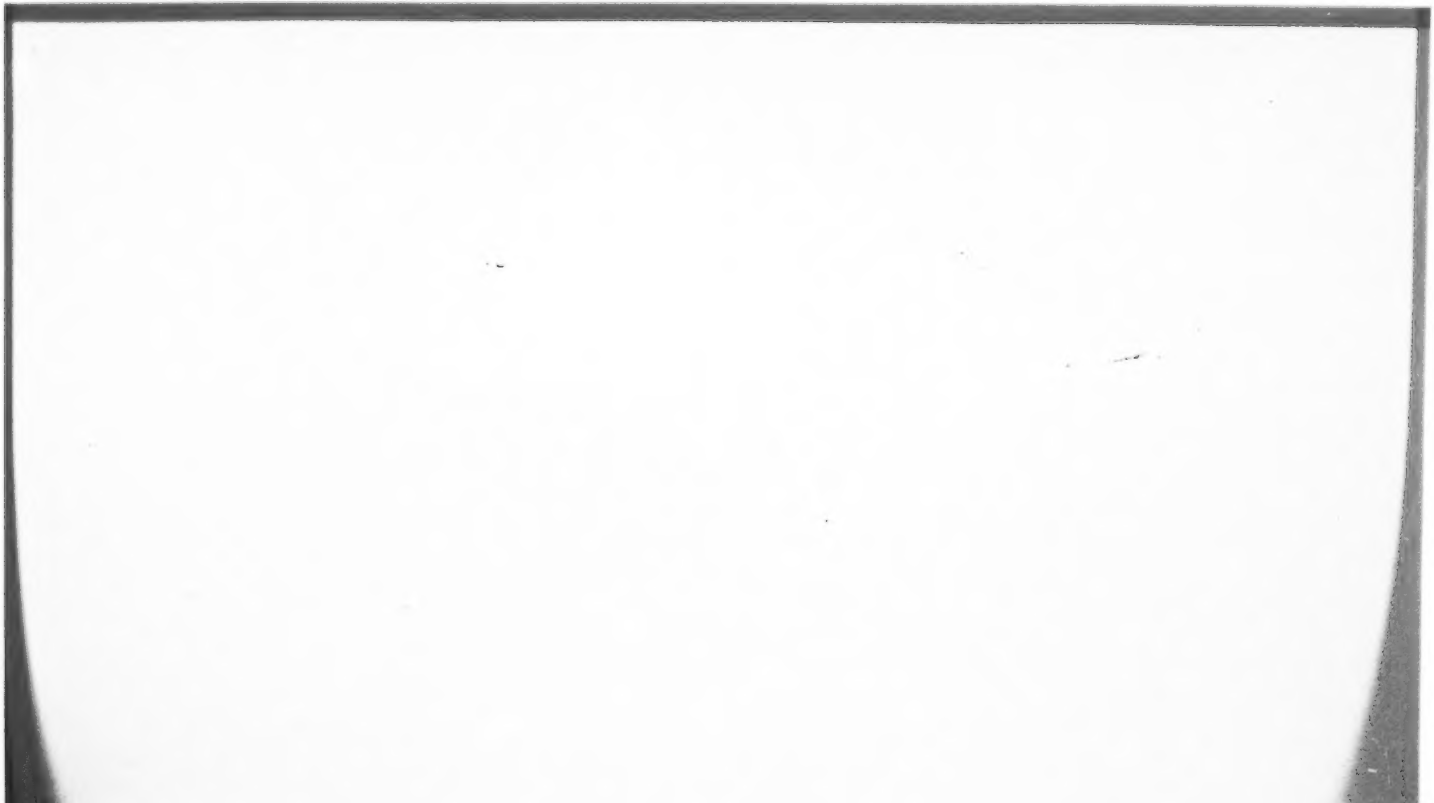

SUPREME COURT OF THE UNITED STATES.

No. 101.—October Term, 1921.

Pine Hill Coal Company, Inc., Appellant, *vs.* The United States. } Appeal from the Court of Claims.

[May 29, 1922.]

Mr. Justice Holmes delivered the opinion of the Court.

This case like *Morrisdale Coal Co.* v. *United States, ante,* is a claim based upon the action of the Fuel Administration under the Act of August 10, 1917, c. 53, § 25; 40 Stat. 276, 284, fixing prices for coal. The allegations and arguments however are different. The transactions of the claimant from and including September, 1917, through January, 1919, are set forth in detail. They embrace large sales at government prices and smaller sales at other than those prices. It is alleged that the prices fixed for the claimant's coal were unjust and unreasonable and did not afford just compensation, and that as a result of keeping to them, as the claimant did, the receipts were actually less than the cost of production. On these facts the petition sets up a contract of indemnity on the part of the United States arising out of the language to be quoted from § 25. It was dismissed on demurrer by the Court of Claims.

The paragraph of § 25 that is relied upon follows paragraphs giving authority to the President personally or through the Federal Trade Commission to fix the price of coal and coke, to regulate the method of distribution among dealers and consumers during the war, and if a producer or dealer neglects to conform to such prices or regulations &c., to take over the plant and business, paying a just compensation. The paragraph in question reads: "That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to

receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code." The latter section of the Judicial Code is the one that gives jurisdiction to the Court of Claims and the former that which gives a limited concurrent jurisdiction to the District Courts.

It is obvious that the words as they stand cannot be applied to sales by producers to third persons; for it would be absurd to suppose that the United States undertook to pay not only such additional sum as might be awarded but also the last twenty-five per centum of the price as fixed, leaving the buyer to retain that amount. The claimant admits this, but insists that however read the paragraph cannot be followed without correction. It argues that the opening words, 'if the price so fixed', necessarily apply to prices in general as fixed by the power just given in the section. Therefore, it says, there should be interpolated in the provision that the seller shall be paid seventy-five per centum the words 'the prices so fixed or'; and in like manner that the provision for recovery should read that he shall recover such sum as added to 'the said prices or' said seventy-five per centum will be just. It points out that while seeking to stimulate production in aid of the war the Government could not fix very high prices without arousing householders and manufacturers, or very low ones without endangering the supply and incurring the charge of confiscation. It is said that the natural way out of the difficulty was for the Government to guarantee a just return, and that by so doing it avoided doubts as to the constitutionality of the statute. There is offered a critical and refined scrutiny of the history of the Amendment that introduced the claim. The argument is that the section that became § 25, when originally offered as an amendment, clearly provided for payment in all cases, that a modification was introduced for payment of only seventy-five per centum upon takings by the United States, but that it was not intended to change the general scope of the relief. Other makeweights are thrown in to which we think it unnecessary to advert.

It is a delicate business to base speculations about the purposes or construction of a statute upon the vicissitudes of its passage. Here we have as against the arguments of the claimant the fundamental and necessarily governing consideration that rightly prevailed below. A liability in any case is not to be imposed upon a Government without clear words. But liability for a regulation, for the consequences of a law, on the part of the legislating power, is most unusual, and where, as here, the liability would mount to great sums, only the plainest language could warrant a Court in taking it to be imposed. The general words 'the prices so fixed' taken by themselves no doubt would include prices to private purchasers, but the specific provision as to paying seventy-five per centum prevails over them on the usual principles of construction and excludes a reference to any prices except those paid by the Government. It is said that those prices are provided for elsewhere, but the claimant's argument presses the consideration that the law had to be hastily passed, and unnecessary reduplication is far more easy to admit than an enormous charge upon the United States that can be fastened upon it only by inserting into a statute words that are not there.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.